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MEMORANDUM

TO: Milton Volz
FROM: Gregg P. Skall
DATE: July 24, 2008
RE: FCC Manual Roaming Requirements

This memorandum addresses the manual roaming requirements of service providers in the Commercial Mobile Radio Services (CMRS), more commonly referred to as cellular service.

The FCC rules provide for mandatory roaming recognition of unregistered roamers regardless of the service provider's technology. The FCC's rules for roaming are found at Part 20 of the Rules. The interconnection and roaming requirements were adopted in 1996 in the *Second Report and Order on Obligations Pertaining to Commercial Mobile Radio Services*¹, in that order the Commission established the requirement that all cellular, broadband PCS, and covered SMR licensees provide manual roaming to any subscriber using a handset that is technically capable of accessing the licensee's system, thus extending the obligation to provide manual roaming that previously only applied to cellular systems. The order specifies that any subscriber to any covered service with a technically compatible handset has the same right as a cellular subscriber to manually roam on cellular systems.

Four years later, the Commission reaffirmed its manual roaming requirement in its *Third Report and Order*,² stating that the basic technical requirement for either "manual" or "automatic" roaming is that the subscriber has a handset technically capable of accessing the host system.³

In 2005, the Commission again addressed the issues of manual roaming, terminating its open proceeding in WT Docket 00-193 and calling for comment on a new *Notice of Proposed Rulemaking* to determine whether it should issue mandatory automatic roaming requirements on all CMRS carriers.⁴ It also took the occasion to address the requirement that other carriers complete calls initiated by Cingular's customers where Cingular cannot because it has neither its own signal nor an automatic roaming agreement.

¹ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 (1996). ("Second Report and Order")

² Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Third Report and Order and Third Notice of Proposed Rulemaking*, 15 FCC Rcd 15975 (2000).

³ See *id.* at ¶ 4, citing *Second Report and Order*, *id.* at 9466 (¶ 7).

⁴ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers* WT Docket 05-265, 20 FCC Rcd 15047 70 FR 56612 FCC 05-160 (2005)

As a result of this review, manual roaming remains a requirement included in the roaming rule at section 20.12 of the FCC rules, which states at subsection (c):

(c) Roaming. Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

WC DOCKET 05-265

In August 2007, the FCC brought its two year old roaming reexamination proceeding to a head with the issuance of a Report and Order and Further Notice of Proposed Rulemaking in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*.⁵ In that report, the commission declined to sunset the existing manual roaming requirement at that time so as to provide additional flexibility for consumers. Reporting its understanding of how manual roaming works,⁶ the Commission explained that there are places where automatic roaming may not be reliable and that there are thousands of manual roaming calls completed each month, and concluded that manual roaming may still be necessary as a safety net. This requirement was reaffirmed in the Commission's statement in its June 6, 2008 Small Entity Compliance Guide on roaming obligations.

Since automatic roaming may not be available in certain instances, the Commission retains the manual roaming rule as a safety net to ensure that subscribers can initiate a wireless call when they are outside of their service area through manual roaming if no automatic roaming agreement is in place (47 C.F.R. § 20.12(a)(1) and (c)).

⁵ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket 05-265, FCC 07-143, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007).

⁶ *Id.*, beginning at ¶72



Federal Communications Commission
Washington, D.C. 20554

June 6, 2008

DA 08-1319

Small Entity Compliance Guide

Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers

WT Docket No. 05-265

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket. This Guide is not intended to replace the rules and final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may revise this Guide without public notice to clarify or update the contents. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Fax: 202-418-0232

fccinfo@fcc.gov

COMPLIANCE REQUIREMENTS

Objectives of the Proceeding

The Commission has found that wireless consumers have a reasonable expectation of receiving seamless continuous nationwide commercial mobile telephony services through roaming. In the roaming proceeding, WT Docket No. 05-265, with regard to commercial services, the Commission seeks to facilitate the provision of wireless services to consumers, especially those in rural areas. In the *Report and Order and Further Notice of Proposed Rulemaking*, the Commission clarified that automatic roaming is a common carrier obligation for commercial mobile radio service (CMRS) carriers, requiring them to provide roaming services to other CMRS carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis. The automatic roaming obligation applies to real-time, two-way switched voice or data services provided by CMRS carriers that are interconnected with the public switched network, and push-to-talk and text-messaging services.

Important Definitions

Automatic roaming occurs when, under a pre-existing contractual agreement between a subscriber's home carrier and a host carrier, a roaming subscriber is able to originate or terminate a call in the host carrier's service area without taking any special actions (*e.g.*, giving a valid credit card number to the carrier providing the roaming service) (47 C.F.R. § 20.3).

Commercial mobile radio service (CMRS) is a mobile service that is: (1) provided for profit (*i.e.*, with the intent of receiving compensation or monetary gain), an interconnected service, and available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (2) the functional equivalent of such a mobile service (47 C.F.R. § 20.3). (*See also* 47 U.S.C. § 332(d)(1) defining "commercial mobile service" as "any mobile service...that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.")

Home carrier is the facilities-based CMRS carrier with which a subscriber has a direct contractual relationship (the home carrier may request automatic roaming service from a host carrier on behalf of its subscribers) (47 C.F.R. § 20.3).

Home market is any geographic location where the home carrier has a wireless license or spectrum usage rights that could be used to provide CMRS (47 C.F.R. § 20.3).

Host carrier is the facilities-based CMRS carrier on whose system a subscriber roams when outside its home carrier's home market (47 C.F.R. § 20.3).

Manual roaming occurs when a subscriber must establish a relationship with the host carrier on whose system he or she wants to roam in order to make a call. Typically, the roaming subscriber

accomplishes this in the course of attempting to originate a call by giving a valid credit card number to the carrier providing the roaming service (47 C.F.R. § 20.3).

Rules That the Commission Amended

- The Commission clarified that automatic roaming is a common carrier obligation for commercial mobile radio service (CMRS) carriers. Upon reasonable request, a host carrier must provide automatic roaming to any technologically compatible home carrier, outside of the requesting home carrier's home market, on reasonable and nondiscriminatory terms and conditions (47 C.F.R. § 20.12(d)).
- The automatic roaming obligation extends to CMRS carriers that offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilize an in-network switching facility that enables the carrier to re-use frequencies and accomplish seamless hand-offs of subscriber calls. The obligation is also applicable to the provision of push-to-talk and text-messaging services by CMRS carriers (47 C.F.R. § 20.12(a)(2)).

Steps a Small Entity Must Take to Invoke its Rights Under the Automatic Roaming Rule

To the extent that an entity seeks to invoke its rights under the Commission's automatic roaming obligation, the requesting (home) carrier:

- Must be a CMRS carrier.
- Must make a reasonable request to the would-be host carrier for automatic roaming service. The Commission rebuttably presumes that all automatic roaming requests are reasonable if the requesting CMRS carriers' network is technologically compatible and the roaming request is for areas outside of the requesting carrier's home market. A reasonable request may only involve real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables the carrier to re-use frequencies and accomplish seamless hand-offs of subscriber calls (*See also* 47 U.S.C. §§ 153 and 332; 47 C.F.R. § 20.3).

When such a request is made, a would-be host CMRS carrier has a duty to respond to the request and avoid actions that unduly delay or stonewall the course of negotiations regarding that request. Such behavior would likely support a finding of a breach of the would-be host carrier's automatic roaming obligations. (Host carriers might also be small entities.)

- As relates to push-to-talk and/or text messaging service(s), must offer such service(s) to its subscribers on its own home network, such roaming must be technically feasible, and any changes to the would-be host carrier's network that are necessary to accommodate the push-to-talk and/or text messaging roaming request(s) must be economically reasonable.

A would-be host carrier may refuse to provide automatic roaming service to a requesting carrier in its home market where it directly competes with the requesting carrier. Specifically, this home market exclusion applies to geographic areas where both the requesting carrier and the would-be host carrier hold wireless licenses or spectrum usage rights.

The automatic roaming obligation does not currently extend to offerings outside the scope of the automatic roaming services definition, such as non-interconnected services or features, information services, or other wireless services that are not CMRS. For example, wireless broadband Internet access would not be subject to the roaming obligation. However, the Commission is considering whether to extend the automatic roaming obligation to non-interconnected services in a further proceeding.

Since automatic roaming may not be available in certain instances, the Commission retains the manual roaming rule as a safety net to ensure that subscribers can initiate a wireless call when they are outside of their service area through manual roaming if no automatic roaming agreement is in place (47 C.F.R. § 20.12(a)(1) and (c)).

Complaints against CMRS carriers regarding the automatic roaming service obligation may be filed with the Commission pursuant to Section 208 of the Communications Act (47 U.S.C. § 208). In deciding such complaints, the Commission will determine on a case-by-case basis whether requests are reasonable or whether the activity complained of is unjust and unreasonable based on the totality of the circumstances of the particular case. Although all roaming complaints will not automatically be placed on the Accelerated Docket, an affected carrier can seek consideration of its roaming complaint under the Commission's Accelerated Docket rules and procedures where appropriate (47 C.F.R. §§ 1.721-1.736; Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, *Second Report and Order*, 13 FCC Rcd 17018 (1998)).

The Commission expressly declined to impose a price cap or any other form of rate regulation on the fees carriers pay each other when one carrier's customer roams on another carrier's network. Instead, such rates should be established through negotiations between the carriers, subject to the statutory requirement that any rates charged be reasonable and non-discriminatory (47 U.S.C. §§ 201 and 202).

Recordkeeping and Other Compliance Requirements

The only reporting or recordkeeping costs to be incurred are administrative costs to ensure that an entity's practices are in compliance with the rule. The only compliance requirement is, as already described, that CMRS carriers must provide automatic roaming to any requesting technologically compatible CMRS carrier outside of the requesting CMRS carrier's home market on reasonable and non-discriminatory terms and conditions.

Links

- Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007).

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-07-143A1.pdf

- News Release, *FCC Clarifies That Roaming Is A Common Carrier Obligation For Commercial Mobile Radio Service Providers* (rel. Aug. 7, 2007).

http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-275797A1.pdf

- Added/Revised Part 20 Rules

http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2007_register&position=all&page=50073

- Accelerated Docket Rules and Procedures

http://www.access.gpo.gov/nara/cfr/waisidx_06/47cfr1_06.html

**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)	
)	
)	
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REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: August 7, 2007

Released: August 16, 2007

Comment Date: (60 days after publication in the Federal Register)

Reply Comment Date: (90 days after publication in the Federal Register)

By the Commission: Chairman Martin and Commissioners Tate and McDowell issuing separate statements; Commissioners Copps and Adelstein approving in part, concurring in part, and issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	5
III. REPORT AND ORDER	18
A. AUTOMATIC ROAMING OBLIGATIONS.....	19
1. Automatic Roaming	19
a. Background.....	19
b. Discussion.....	23
2. Determination Not to Impose Rate Regulation on Roaming Agreements	36
a. Background.....	36
b. Discussion.....	37
B. OTHER ISSUES.....	41
1. "Most Favored" Roaming Partner Rates for Tier IV CMRS Providers	42
2. In-Market or Home Roaming	46
3. Access to Certain Data Features and Enhanced Digital Networks.....	52
a. Access to push-to-talk, text messaging (SMS) and non-interconnected data features.....	52
b. Access to Enhanced Digital Networks.....	57
4. Public Filing of Roaming Rates	61
C. CODIFICATION OF AUTOMATIC ROAMING OBLIGATIONS	63
D. PETITION FOR INVESTIGATION PURSUANT TO SECTION 403 OF THE ACT	68

E. MANUAL ROAMING.....	72
IV. FURTHER NOTICE OF PROPOSED RULEMAKING.....	77
V. PROCEDURAL MATTERS.....	82
A. Final Regulatory Flexibility Analysis.....	82
B. Initial Regulatory Flexibility Analysis.....	83
C. Ex Parte Presentations.....	84
D. Comment Filing Procedures.....	85
E. Paperwork Reduction Act.....	89
F. Congressional Review Act.....	90
G. Contact Persons.....	91
VI. ORDERING CLAUSES.....	92
APPENDIX A- Final Rules	
APPENDIX B- List of Commenters	
APPENDIX C- Final Regulatory Flexibility Analysis	
APPENDIX D- Initial Regulatory Flexibility Analysis	

introduction

1. In this Report and Order, we clarify that automatic roaming is a common carrier obligation for commercial mobile radio service (CMRS) carriers,¹ requiring them to provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act. We reiterate the Commission’s earlier determination that roaming is a common carrier service because roaming capability gives end users access to a foreign network in order to communicate messages of their own choosing.² Thus, the provision of roaming is subject to the requirements of Section 201, 202, and 208 of the Communications Act.³

2. We determine that when a reasonable request is made by a technologically compatible CMRS carrier, a host CMRS carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier’s home market, consistent with the protections of Sections 201 and 202 of the Communications Act. We also find that the common carrier obligation to provide roaming extends to services that are real-time, two-way switched voice or data service that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse

¹“Commercial mobile service” is defined to mean “any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.” 47 U.S.C. § 332(d)(1). *See also* 47 C.F.R. § 20.3 defining “Commercial mobile radio service” as “[a] mobile service that is: (a)(1) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional equivalent of such a mobile service described in paragraph (a) of this section.”

² *See* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462, 9468-69 ¶ 10 (1996) (“*Interconnection and Resale Obligations Second Report and Order*” and “*Interconnection and Resale Obligations Third NPRM*,” respectively).

³ *See* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 05-265, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) (“*Reexamination NPRM*”); *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd 9463-71 ¶¶ 1-14. *See also* 47 C.F.R. § 20.15. Section 332(c)(1) of the Act provides that a person engaged in the provision of a service that is a commercial mobile service shall be treated as a common carrier for purposes of the Act. *See* 47 U.S.C. § 332(c)(1).

frequencies and accomplish seamless hand-offs of subscriber calls. Additionally, we decline to sunset the existing manual roaming requirement at this time to provide additional flexibility for consumers. We note that roaming, as a common carrier obligation, does not extend to services that are classified as information services or to services that are not CMRS.⁴

3. We recognize that today CMRS consumers increasingly rely on mobile telephony services and they reasonably expect to continue their wireless communications even when they are out of their home network area. We believe our findings and clarifications in this Report and Order with respect to CMRS providers' obligations regarding roaming services serve the public interest and safeguard wireless consumers' reasonable expectations of receiving seamless nationwide commercial mobile telephony services through roaming.

4. Finally, in the Further Notice of Proposed Rulemaking, we seek comment on whether the roaming obligation should be extended to non-interconnected services or features, including services that are classified as information services, or to services that are not CMRS.

background

5. "Roaming" occurs when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider with which the subscriber has no direct pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call.⁵ Typically, although not always, roaming occurs when a subscriber places or receives a call while physically located outside of the service area of its "home" CMRS provider. The basic technical requirement for roaming, whether done manually or automatically, is that the subscriber has a handset that is capable of accessing the roamed-on (host) system.⁶

6. There are two forms of roaming -- manual and automatic. With manual roaming, the subscriber must establish a relationship with the host carrier on whose system he or she wants to roam in order to make a call.⁷ Typically, the roaming subscriber accomplishes this in the course of attempting to originate a call by giving a valid credit card number to the carrier providing the roaming service. By contrast, with automatic roaming, the roaming subscriber is able to originate or terminate a call without taking any special actions.⁸ Automatic roaming requires a pre-existing contractual agreement between

⁴ Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, *Declaratory Ruling*, 22 FCC Rcd. 5901, ¶¶ 11-12 (2007) ("Wireless Broadband Internet Access Declaratory Ruling"); 47 C.F.R. § 20.9.

⁵ See *Reexamination NPRM*, 20 FCC Rcd at 15048 ¶ 2. Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, 15 FCC Rcd 21628 ¶ 2 (2000) ("2000 CMRS Roaming NPRM"); *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9464 ¶ 3. Section 22.99 of the Commission's rules describes a "roamer" as "[a] mobile station receiving service from a station or system in the Public Mobile Services other than one to which it is a subscriber." 47 C.F.R. § 22.99.

⁶ See *2000 CMRS Roaming NPRM*, 15 FCC Rcd at 21629 ¶ 2; *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9466 ¶ 7.

⁷ Manual roaming is the only form of roaming that is available when there is no pre-existing contractual relationship between a subscriber, or her home system, and the system on which she wants to roam. See *Reexamination NPRM*, 20 FCC Rcd at 15049 ¶ 3.

⁸ This form of roaming is sometimes referred to as "seamless" roaming. However, some parties understand "seamless" roaming to include handoff of calls in progress as one moves from the service area of one provider to another. For the sake of clarity, we use the term "automatic" roaming to refer to origination and termination of calls without the need for any special facilitating action by the subscriber. See *Reexamination NPRM*, 20 FCC Rcd at 15049 ¶ 3.

the subscriber's home system and the host system.⁹

7. *1981 Manual Roaming Order.* The Commission first adopted roaming requirements in 1981 as part of the original cellular service rules.¹⁰ Under these rules, cellular carriers were required to offer manual roaming.¹¹ The Commission determined that requiring cellular carriers to provide roaming would further the public interest in providing, to the greatest extent possible, a "nationwide high-capacity mobile communications service capable of providing local and roaming mobile telephone users the ability to place and receive calls."¹² In 1994, after passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993,¹³ the Commission undertook a comprehensive review of CMRS-related issues, including roaming. The Commission considered among other issues, whether "the obligation to permit roaming should be extended to all CMRS" and inquired as to the regulatory standard necessary to promote roaming.¹⁴

8. *1996 Manual Roaming Order and Further Notice.* In 1996, the Commission extended its original cellular roaming rules to the Broadband Personal Communications Service (PCS) and the Specialized Mobile Radio Service (SMR), the other CMRS carriers at that time that were competing with cellular in the provision of real-time, two-way voice services.¹⁵ The Commission's decision began by noting that Sections 201(b) and 202(a) of the Communications Act, which govern common carrier communications services, are applicable to CMRS providers.¹⁶ The Commission rejected BellSouth's argument that "roaming was merely a billing arrangement and not a common carrier service."¹⁷ The Commission stated that "[r]oaming capability . . . gives end users access to a foreign network in order to communicate messages of their own choosing. We therefore agree with those commenters that argue that roaming is a common carrier service."¹⁸ The Commission also reasoned that roaming met the statutory requirements of CMRS and, by that statutory definition, could be considered to be offered as a common

⁹ See *id.* See also *2000 CMRS Roaming NPRM*, 15 FCC Rcd at 21629-30 ¶ 4; *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9465-66 ¶ 6.

¹⁰ See *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, CC Docket No. 79-318, *Report and Order*, 86 FCC 2d 469 (1981) (*Cellular Report & Order*) (adopting requirement in then Section 22.911(b) of the Commission's rules that base stations render service to properly licensed roamers).

¹¹ See 47 C.F.R. § 22.901 (1995); 47 C.F.R. § 22.911(b) (1981).

¹² See *Cellular Report & Order*, 86 FCC 2d at 490 ¶ 75.

¹³ See Omnibus Budget Reconciliation Act of 1993, Title VI, § 6002(b)(2)(A), (B), (OBRA), 47 U.S.C. §§ 303(n), 332; Communications Act of 1934 as amended (Communications Act) §§ 203, 204, 205, 211, 212, and 214. Section 332 defines CMRS as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." Communications Act, § 332(d)(1), 47 U.S.C. § 332(d)(1).

¹⁴ See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9465 ¶ 4 (citing Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Notice of Proposed Rule Making and Notice of Inquiry*, 9 FCC Rcd 5408 (1994) and *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Notice of Proposed Rule Making*, 10 FCC Rcd 10666 (1995)).

¹⁵ See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9464 ¶ 2, 9470-71 ¶¶ 12-14. The Commission stated that "we conclude that the public interest will be served by extending our existing manual roaming rule, which is part of our cellular service rules, to obligate all CMRS licensees competing in the mass market for real-time, two-way voice services and to protect the subscribers of all carriers offering such services. That group consists of cellular, broadband PCS and covered SMR providers." See *id.* at 9470 ¶ 12.

¹⁶ See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9468-69 ¶ 10.

¹⁷ *Id.*

¹⁸ *Id.*

carrier service -- *i.e.*, interconnected and offered for profit to a substantial segment of the public.¹⁹ The Commission also noted that it had the statutory authority to impose a roaming requirement as a licensing condition.²⁰ The Commission, thus, set out the two pillars of its statutory authority with respect to roaming under Title II and III of the Act.

9. The Commission then conditioned the grant of cellular, broadband PCS, and covered SMR licenses under Sections 303(r) and 309 of the Act on compliance with its manual roaming rule.²¹ The Commission also discussed its manual roaming regulation in the context of the broader general obligations that CMRS providers have as common carriers. The Commission reminded all CMRS carriers that, irrespective of their regulatory obligations for manual roaming, they would still be subject to the complaint process of Section 208, stating “[a]llegations that particular practices by non-covered CMRS providers [*i.e.*, those not covered by the extended manual roaming rule] are unjust, unreasonable or otherwise in violation of the Communications Act would be grounds for complaint under Section 208 of that Act.”²²

10. The Commission, however, declined to adopt an automatic roaming rule at that time.²³ The Commission stated that the record on this issue was “inconclusive” and decided to seek comment on the issue in a related *Third Notice of Proposed Rulemaking (Third NPRM)*.²⁴ As part of the *Third NPRM*, the Commission sought comment on whether it should require carriers to provide “automatic” roaming on a non-discriminatory basis. The Commission also specifically sought additional comment on whether it should require cellular, broadband PCS and certain covered SMR licensees that enter into automatic roaming agreements to make like agreements available to similarly situated providers, where technically compatible handsets are being used, under nondiscriminatory rates, terms, and conditions.²⁵

11. *2000 Rulemakings*. In August 2000, in a *Memorandum Opinion and Order*, the Commission generally affirmed the manual roaming requirement it had adopted in 1996, while modifying the definition under which CMRS providers were “covered” and extending the rule’s application to certain data providers.²⁶ Thus, the manual roaming requirement, as amended, applies to all cellular, broadband PCS, and SMR providers that “offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.”²⁷ In this order, the Commission terminated consideration of the automatic roaming issues raised in the *Third NPRM*,

¹⁹ The Commission noted that roaming meets all the statutory elements of commercial mobile radio service, and therefore, of common carriage: “roaming satisfies the statutory elements of CMRS, and is thus a common carrier service, because it is (1) an interconnected mobile service (2) offered for profit (3) in such a manner as to be available to a substantial portion of the public.” See *id.* at 9469 ¶ 10 n.30 (citing 47 U.S.C. § 332(d)(1)).

²⁰ *Id.* at 9469 ¶ 10.

²¹ *Id.* at 9471 ¶ 13.

²² *Id.* at 9472 ¶ 14.

²³ See *id.* at 9472 ¶ 16.

²⁴ *Interconnection and Resale Obligations Third NPRM*, 11 FCC Rcd at 9473 ¶ 17.

²⁵ *Interconnection and Resale Obligations Third NPRM*, 11 FCC Rcd at 9475 ¶ 22.

²⁶ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd 15975 (2000) (“*Interconnection and Resale Obligations Third Report and Order*” and “*Interconnection and Resale Obligations MO&O*,” respectively).

²⁷ See *Interconnection and Resale Obligations Third Report and Order*, 15 FCC Rcd at 15990 ¶ 18.

finding that subsequent developments in the market and technology had rendered the record stale.²⁸

12. Subsequently, in November 2000, the Commission initiated a new proceeding to consider whether the Commission should adopt an automatic roaming rule that would apply to CMRS systems and whether the Commission should sunset the manual roaming requirement that currently applies to those systems.²⁹ In the *Notice of Proposed Rulemaking (2000 NPRM)*, the Commission specifically sought comment on: (1) whether to adopt an automatic roaming rule and if so, how such a requirement should be designed and implemented; and (2) whether the existing manual roaming rule and/or any automatic roaming rule that might be adopted should sunset and, if so, when.

13. Since the *2000 NPRM*, the Commission has discussed roaming issues in the context of its review and consideration of several wireless mergers, including Cingular/AT&T Wireless, ALLTEL/Western Wireless, and Sprint/Nextel. In the Cingular/AT&T Merger Order, the Commission explicitly based its analysis of roaming issues on “the potential harm to consumers of mobile telephony services, rather than to mobile telephony providers.”³⁰ The Commission found that competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices, stating that “an overall disciplinary force in the context of the intercarrier market for roaming services is that customers of various firms always have the option to switch to firms employing other air interfaces.”³¹ In the ALLTEL/Western Wireless and Sprint/Nextel orders, the Commission noted that if a roaming partner believes that ALLTEL or Sprint is charging unreasonable roaming rates, it can file a complaint with the Commission under Section 208 of the Communications Act.³² The Commission recognized, however, that the manual roaming requirement and the ability to file a Section 208 complaint may not fully address the concerns raised by the commenters. Given the broad scope of some of the competitive concerns raised in the mergers, many of which seemed to call for a reevaluation of the Commission’s roaming rules and policies, the Commission determined that it was appropriate to address those concerns in the context of a rulemaking proceeding to consider the Commission’s roaming rules and requirements applicable to CMRS providers under current market conditions and developments in technology.³³

²⁸ *Id.* at 15982-83 at ¶¶ 22-24.

²⁹ See *2000 CMRS Roaming NPRM*, *supra*, n. 5.

³⁰ See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21588 ¶ 172 (2004) (“*Cingular-AT&T Wireless Order*”).

³¹ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21591 ¶ 180.

³² See Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13093 ¶ 109 (2005) (“*ALLTEL-WWC Order*”); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13093, 14012-13 ¶ 127 (2005) (*Sprint Nextel Order*). See also Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, for Consent to Transfer Control of Licenses and Authorizations, File Nos. 0002444650, 0002444656, 0002456809, *Memorandum Opinion and Order*, 21 FCC Rcd 7358 (2006) (denying SouthernLINC’s request that approval of the transaction be conditioned on the requirement that Sprint Nextel provide automatic roaming for iDEN voice, digital dispatch and data services at reasonable/non-discriminatory rates and terms).

³³ See *ALLTEL-WWC Order*, 20 FCC Rcd at 13093 ¶ 109. In approving these merger proposals, the Commission noted that “our manual roaming rule requires other carriers to complete calls initiated by Cingular’s [ALLTEL’s or Sprint’s] customers where Cingular [ALLTEL or Sprint] cannot because it has neither its own signal nor an automatic agreement.” See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182; *ALLTEL-WWC Order*, 20 FCC Rcd 13053 at 13093 ¶ 108; and *Sprint Nextel Order*, 20 FCC Rcd at 14012-13 ¶ 127. In addition, to further ensure compliance, the Commission stated that “we adopt as a condition to our grant in this Order a reciprocal duty, *i.e.*, that Cingular [ALLTEL or Sprint] may not prevent its customers from reaching another carrier and completing their calls in these circumstances, unless specifically requested to do so by a subscriber. Finally in

14. *2005 Reexamination NPRM*. In August 2005, the Commission released a *Memorandum Opinion and Order and Notice of Proposed Rulemaking (Reexamination NPRM)*, which terminated the pending *2000 NPRM* and initiated a new proceeding to re-examine whether the Commission's current rules regarding roaming requirements applicable to CMRS providers should be modified given the current state of the CMRS market.³⁴

15. In the *Reexamination NPRM*, the Commission sought to develop a record, with up-to-date information on the state of roaming in today's CMRS marketplace, in order to determine what regulatory regime would be appropriate for roaming services.³⁵ The *Reexamination NPRM* sought comment on issues related to manual and automatic roaming, including issues concerning roaming negotiations, regional and rural carrier's concerns, technical considerations, and the impact of recently approved mergers on the availability of roaming services.³⁶ The *Reexamination NPRM* asked commenters to discuss in detail, and provide economic analysis on, whether changes in the CMRS industry have had any positive or negative effect on the availability of roaming to consumers.³⁷

16. In response to the *Reexamination NPRM*, twenty one parties filed comments and twenty four parties filed reply comments.³⁸ The record represents all segments of the CMRS industry, including nationwide carriers, regional and small carriers, trade associations, and cooperatives. A number of commenters included economic testimony analyzing the CMRS marketplace in terms of the availability of roaming services and prices.³⁹ In addition to filing comments, a number of parties made *ex parte* presentations to Commission staff.

17. *Section 403 Petition*. On April 25, 2006, AIRPEAK, Airtel, Cleveland Unlimited, Leap, MetroPCS, Punxsutawney, RTG, and SouthernLINC ("Petitioners"), filed a Joint Section 403 Petition requesting that the Commission affirmatively regulate automatic roaming. Petitioners contend that the record in the roaming proceeding does not contain sufficient specific concrete data on roaming rates and practices, and they ask the Commission to initiate an inquiry for the purpose of gathering and inspecting a representative sample of wireless carriers roaming agreements on a confidential basis.⁴⁰ On May 5, 2006, Oppositions to the Joint Petition were filed by Cingular, Sprint/Nextel and Verizon Wireless.⁴¹ On May

the future, if a roaming partner believes that Cingular [ALLTEL or Sprint] is charging unreasonable roaming rates, it can always file a complaint with the Commission under Section 208 of the Communications Act." See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182; *ALLTEL-WWC Order*, 20 FCC Rcd at 13093 ¶ 108; and *Sprint Nextel Order*, 20 FCC Rcd at 14012-13 ¶ 127.

³⁴ Because the record was stale, the Commission terminated the then-pending automatic roaming NPRM proceeding, and initiated the current proceeding. See *Reexamination NPRM*, 20 FCC Rcd at 15055 ¶¶ 18-19.

³⁵ *Reexamination NPRM*, 20 FCC Rcd at 15048 at ¶ 1.

³⁶ *Id.* at 15058-59 ¶¶ 23-24, 27-32, 36.

³⁷ *Id.* at 15059 ¶ 36.

³⁸ See *infra* Appendix B.

³⁹ See expert economic analysis provided by Reply Comments of Harold W. Furchtgott-Roth on behalf of T-Mobile (Furchtgott-Roth/T-Mobile Reply Comments); Comments and Reply Comments of R. Preston McAfee on behalf of SouthernLINC (McAfee/SouthernLINC Comments and Reply Comments); ERS Group Comments on behalf of Leap (ERS Group/Leap Comments); Comments and Reply Comments of Gregory L. Rosston on behalf of Sprint Nextel (Rosston/Sprint Nextel Comments and Reply Comments); Thomas W. Hazlett Reply Comments on behalf of Cingular Reply Comments (Hazlett/Cingular Reply Comments); David S. Sibley on behalf of Leap Reply Comments (Sibley/Leap Reply Comments).

⁴⁰ See Joint Petition for Commission Inquiry Pursuant to Section 403 of the Communications Act, WT Docket No. 05-265, (filed Apr. 25, 2006) ("Joint Petition"). See also *infra* Appendix B (list of Joint Section 403 Petitioners and commenters).

⁴¹ See Cingular Opposition to Joint Petition for Commission Inquiry, WT Docket No. 05-265, filed May 5, 2006; Sprint Nextel Opposition to Joint Petition for Section 403 Investigation, WT Docket No. 05-265, filed May 5, 2006; Verizon Wireless Opposition to Joint Petition for Commission Inquiry, WT Docket No. 05-265, filed May 5, 2006.

12, 2006, the Petitioners filed a Reply to Oppositions.⁴²

report and order

18. In this Report and Order, we first find that automatic roaming is a common carrier obligation pursuant to Sections 201 and 202 of the Communications Act, and then discuss the scope of the automatic roaming obligation for CMRS carriers. We decline to regulate the automatic roaming rates, instead allowing the rates to be freely determined through negotiations between the carriers based on competitive market forces. Next, we address other issues raised by commenters in the record, including a request for “most favored” roaming partner rates for Tier IV CMRS carriers, in-market or home roaming issues, access to non-interconnected features and enhanced digital networks, and public filing of roaming rates. In addition, we codify the automatic roaming obligations into a rule, imposing an affirmative obligation to provide automatic roaming on CMRS carriers. We also deny the petition for investigation pursuant to Section 403 of the Act. Finally, we decline to sunset the manual roaming rule at this time.

AUTOMATIC ROAMING OBLIGATIONS

Automatic Roaming

Background

19. In the *Reexamination NPRM*, the Commission initiated a new proceeding to reexamine the state of roaming in the CMRS marketplace and whether CMRS providers should be subject to roaming obligations.⁴³ Noting that there had been recent changes in technologies and mobile telephony markets, the Commission sought up-to-date information on automatic roaming that would enable the Commission to fully consider the question and reach an informed decision about whether to adopt an automatic roaming rule.⁴⁴ Particularly, the Commission was interested in the effects that the existing roaming environment has on U.S. consumers.⁴⁵ Interested parties were invited to discuss in detail whether, in the absence of an automatic roaming requirement, there have been any CMRS industry changes and trends that have positively or negatively affected the availability of roaming to consumers.⁴⁶ Commenters were also asked to address both the potential benefits of various regulatory options and the potential costs. In addition, the Commission invited commenters to provide economic analysis and data regarding the potential benefits and costs of imposing an automatic roaming rule.⁴⁷ Finally, the Commission requested generally that commenters submit comments on any issues they believed important for the Commission to consider as it determined whether the public interest would be served by placing an automatic roaming requirement on CMRS providers.⁴⁸

20. In the *Reexamination NPRM*, the Commission suggested one possible automatic roaming rule would require, as a condition of license, CMRS providers to enter into roaming agreements with other such providers where technically compatible handsets are being used, under non-discriminatory rates, terms, and conditions.⁴⁹ The Commission sought comment on whether a non-discriminatory approach to automatic roaming is appropriate in the current marketplace, or whether any other approaches should be

⁴² See Joint Petitioner’s Reply to Oppositions, WT Docket No. 05-265, filed May 12, 2006.

⁴³ See *Reexamination NPRM*, 20 FCC Rcd. at 15055 ¶ 20.

⁴⁴ See *id.* at 15057 ¶ 25.

⁴⁵ See *id.* at 15058 ¶ 27.

⁴⁶ See *id.* at 15057 ¶ 25.

⁴⁷ See *id.* at 15058 ¶ 28.

⁴⁸ See *id.* at 15059 ¶ 31.

⁴⁹ See *Reexamination NPRM*, 20 FCC Rcd at 15059-60 ¶ 33; *Interconnection and Resale Obligations Third NPRM*, 11 FCC Rcd at 9475 ¶ 22. This rule had been suggested in the *2000 CMRS NPRM*, *supra* n. 5, as well as in the *Interconnection and Resale Obligations Third NPRM*, *supra* n. 2.

considered.⁵⁰ To the extent that a CMRS provider refuses to enter an automatic roaming agreement, the Commission also sought comment on the adequacy of remedies available under existing law, such as Sections 201, 202, 208, 251, and 332 of the Act.⁵¹

21. In response to the *Reexamination NPRM*, many smaller and regional carriers urge the Commission to adopt an automatic roaming rule and affirm that CMRS carriers have an affirmative obligation to provide roaming service to other carriers on a just, reasonable, and non-discriminatory basis.⁵² Leap argues that the Commission should adopt rules in order to facilitate enforcement of the common carrier obligations and promote competition.⁵³ In addition, Centennial and other small carriers contend that the Commission should ensure that roaming rates are reasonable and guard against discrimination in the rates, terms and conditions under which roaming is provided by CMRS carriers.⁵⁴ RCA and SouthernLINC further argue that the Commission should require carriers to enter into good faith negotiation for automatic roaming.⁵⁵ Some of the commenters urge the Commission to adopt specific rules regarding carriers' roaming obligations, while others request only that the Commission provide general guidance regarding the nature of providers' roaming obligations and then leave it to marketplace to determine what constitutes "reasonable terms" under roaming agreements.⁵⁶ We also note that in its recent comments in another proceeding, the Navajo Nation argues that a better incentive for rural roaming must be established because, in rural areas such as Indian reservation lands, they contend that often only a single service provider is available.⁵⁷ The Navajo Nation believes that mandatory roaming would result in more competitive pricing and services for consumers in these rural areas.⁵⁸

22. In contrast, nationwide carriers and others oppose any automatic roaming regulation, arguing that automatic roaming agreements have proliferated without Commission action. They contend that allowing market forces to operate freely without regulation has resulted in low roaming rates and near nationwide coverage for many carriers.⁵⁹ Also, these commenters argue that a mandatory automatic

⁵⁰ See *Reexamination NPRM*, 20 FCC Rcd at 15059-60 ¶ 33.

⁵¹ See *id.* at 15060 ¶ 34. A variety of parties in CC Docket No. 94-54 contended that existing remedies were sufficient. In CC Docket No. 94-54, *see, e.g.*, Bell Atlantic Comments at 7-8 and RTG Comments at 4.

⁵² See generally Leap Comments; SLO Cellular Comments; MetroPCS Comments; SouthernLINC Comments; Safety and Frequency Equity Competition Coalition (SAFE) Comments; NY3G Partnership (NY3G) Comments; Comments of Organization for the Promotion Advancement of Small Telecommunications Companies (RTG/OPASTCO), Alaska Native Broadband 1 License, LLC (ANB), Centennial, John Staurulakis, Inc. (JSI), Unicom, National Telecommunications Cooperative Association (NTCA), ACS Wireless, Inc. (ACS), AIRPEAK Communications, LLC and Airtel Wireless, LLC, Joint Comments (AIRPEAK/Airtel Joint Comments), North Dakota Network Company (NDNC), NTCA, RCA, Cleveland Unlimited, Inc. (Cleveland Unlimited), Punxsutawney Communications (Punxsutawney), Suncom Wireless (Suncom).

⁵³ Leap Reply Comments at 6.

⁵⁴ ANB Comments at 1-2; Centennial Reply Comments at 8-10; JSI Reply Comments at 1-2; Unicom Reply Comments at 1-2; and SAFE Comments at 3.

⁵⁵ See RCA Comments at 3-5; SouthernLINC Comments at 53-54.

⁵⁶ See, *e.g.*, Centennial Comments at 11.

⁵⁷ See Navajo Nation Telecommunications Regulatory Commission Comments filed in WT Docket No. 06-156, Biennial Regulatory Review – Amendments to Streamline and Harmonize Various Rules Affecting Wireless Radio Services: Wireless Telecommunications Bureau, Navajo Nation Telecommunications Regulatory Commission Comments at 5 ("Navajo Nation Streamlining Comments").

⁵⁸ See Navajo Nation Streamlining Comments at 5. The Navajo Nation also argues that roaming should be universally mandated for services provided via a federally-subsidized telecom project, and there should be no charge for roaming services to customers utilizing services from these projects. See Navajo Nation Streamlining Comments at 5.

⁵⁹ See, *e.g.*, Cingular Comments at 12-30; Cingular Reply Comments at 3-8; Nextel Partners Comments at 5-9; Sprint Nextel Comments at 17-21; Sprint Nextel Reply Comments at 9-11; T-Mobile Comments Comments at 3-6; T-Mobile Reply Comments at 4-5; Verizon Wireless Comments at 17-21; Verizon Wireless Reply Comments at 20-24; Alltel Reply Comments at 1-2; Edge Reply Comments at 6-9.

roaming requirement would stifle the incentive for carriers to provide facilities-based coverage, innovative rate plans, and better quality services at lower costs.⁶⁰

Discussion

23. We clarify that automatic roaming is a common carrier service, subject to the protections outlined in Sections 201 and 202 of the Communications Act. If a CMRS carrier receives a reasonable request for automatic roaming, pursuant to Section 332(c)(1)(B) and Section 201(a), it is desirable and serves the public interest for that CMRS carrier to provide automatic roaming service on reasonable and non-discriminatory terms and conditions.⁶¹ As discussed below, services that are covered by the automatic roaming obligation are limited to real-time, two-way switched voice or data services, provided by CMRS carriers, that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These findings are consistent with the Commission's previous determinations.⁶²

24. Until our actions today, the Commission has not expressly addressed whether, under Sections 201 and 202 of the Act, it is desirable and necessary to provide automatic roaming upon reasonable request. Nor has it expressly stated that automatic roaming is a common carrier service. Moreover, it has not adopted an automatic roaming rule. As a result, the record before us demonstrates that it is not clear to some of the parties in this proceeding whether the provisioning of automatic roaming is a common carrier service or to what extent the requirements of Sections 201 and 202 of the Communications Act apply to automatic roaming.⁶³ In addition, commenters expressed differing views on the scope of carriers and spectrum bands to which any automatic roaming obligations may apply.⁶⁴ We address and clarify these matters in the discussion that follows.

25. As previously determined, roaming is a common carrier service, because roaming capability gives end users access to a foreign network in order to communicate messages of their own choosing.⁶⁵ In finding that roaming is a common carrier service, the Commission noted the contrast between roaming and services such as billing and collection offered by local exchange carriers (LECs) and interexchange carriers (IXCs), which are not common carriage because they do "not allow customers of the service . . . to communicate or transmit intelligence of their own design and choosing," and because they can be

⁶⁰ See, e.g., Cingular Comments at 22-25; Nextel Partners Comments at 6-9; Sprint Nextel Comments at 20; Alltel Reply Comments at 6-8.

⁶¹ See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9463 ¶ 2. Under Section 201(a) of the Act, common carriers must provide service "upon reasonable request," and the Commission has authority to order interconnection among carriers if it finds it necessary or desirable in the public interest. See 47 U.S.C. § 201(a). Section 201(b) requires that all charges, practices, classifications, and regulations for common carrier service be just and reasonable and provides that any charge, practice, classification, and regulation that is unjust and unreasonable is unlawful. See 47 U.S.C. § 201(b). Section 202(a) prohibits unjust or unreasonable discrimination in charges, practices, classifications, and services by common carriers in connection with any "like" communications service and also prohibits undue or unreasonable preferences or advantages. See 47 U.S.C. § 202(a). Section 208 provides that complaints may be filed with the Commission against common carriers subject to the Act. See 47 U.S.C. § 208.

⁶² See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9469 ¶10 and 9472 ¶16 (stating that roaming is a common carrier service and extending the application of manual roaming rule to certain CMRS carriers (cellular, broadband PCS and covered SMR) competing in the mass market for real-time, two-way voice services and to protect the subscribers of all carriers offering such services). See also *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9463-71 ¶¶ 1-14.

⁶³ See AIRPEAK/Airtel Joint Comments at 8; Centennial Comments at 11; Leap Comments at 17-18; MetroPCS Comments at 21; NY3G Comments at 4; SLO Cellular Comments at 2; SouthernLINC Comments at 24-25.

⁶⁴ See e.g., NY3G Partnership Comments at 3-5; SAFE Comments at 2-3.

⁶⁵ See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9469 ¶ 10.

offered by non-communications entities such as credit card companies.⁶⁶ The Commission also found that roaming satisfies all the statutory elements of commercial mobile radio service,⁶⁷ and “is thus a common carrier service, because it is (1) an interconnected mobile service (2) offered for profit (3) in such a manner as to be available to a substantial portion of the public.”⁶⁸ As explained earlier, there are two forms of roaming -- manual and automatic. We find that both forms of roaming are common carrier services because both forms of roaming capability give end users access to a foreign network in order to communicate messages of their own choosing.⁶⁹

26. Further, under section 332 of the Communications Act, CMRS providers are subject to common carrier regulations. Section 332(c)(1)(A) provides that a “person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is engaged, be treated as a common carrier,”⁷⁰ and subsection (c)(1)(B) states that, “[u]pon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Title.”⁷¹ Like any other common carrier service offering, if a CMRS provider offers automatic roaming, it triggers its common carrier obligations with respect to the provisioning of that service under the Communications Act. We determine that, if a CMRS carrier receives a reasonable request for automatic roaming, pursuant to Section 332(c)(1)(B) and Section 201(a), it is desirable and necessary to serve the public interest for that CMRS carrier to provide automatic roaming service on reasonable and non-discriminatory terms and conditions.⁷²

27. The record demonstrates that automatic roaming is currently widespread due, in large part, to the offering of nationwide and regional calling plans.⁷³ As the Commission has previously noted, automatic roaming is far more convenient for a subscriber than manual roaming and, as a practice, has become increasingly widespread.⁷⁴ Today, most wireless customers expect to roam automatically on other carriers’ networks when they are out of their home service area. Accordingly, we recognize that automatic roaming benefits mobile telephony subscribers by promoting seamless CMRS service around the country, and reducing inconsistent coverage and service qualities.⁷⁵

28. Given the current CMRS market situation and wireless customer expectations, we find it is in the public interest to facilitate reasonable roaming requests by carriers on behalf of wireless customers, particularly in rural areas.⁷⁶ In other words, in order to enable its subscribers to receive service

⁶⁶ See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9469 ¶ 10 (citing *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, *Report and Order*, 102 FCC 2d 1150 (1986)).

⁶⁷ 47 U.S.C. § 332(d).

⁶⁸ See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9469 ¶ 10 n.30 (citing 47 U.S.C. § 332(d)(1)).

⁶⁹ See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9469 ¶ 10. We note that with manual roaming, the subscriber must establish a relationship directly with the host carrier on whose system he or she wants to roam in order to make a call. Automatic roaming, however, requires a pre-existing contractual agreement between the subscriber’s home system and the host system. In other words, the request for automatic roaming has to be done by the subscriber’s carrier on behalf of the subscriber to enable the subscriber to roam.

⁷⁰ 47 U.S.C. § 332(c)(1)(A).

⁷¹ 47 U.S.C. § 332(c)(1)(B).

⁷² See *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9463 ¶ 2.

⁷³ MetroPCS Comments at 21. See also *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Eleventh Report*, 21 FCC Rcd 10947 (2006) (“*Eleventh Report*”).

⁷⁴ See *ALLTEL-WWC Order*, 20 FCC Rcd at 13090 ¶ 101.

⁷⁵ See ACS Comments at 1-2; SLO Cellular Reply Comments at 5; Navajo Nation Comments in WT Docket No. 06-156 at 5.

⁷⁶ See 47 U.S.C. §§ 301, 303(c), 332.

seamlessly, a CMRS carrier may make an automatic roaming request on behalf of its subscribers. If the request is reasonable, then the would-be host carrier cannot refuse to negotiate an automatic roaming agreement with the requesting carrier.⁷⁷ Many smaller and regional carriers -- many in rural areas -- urge the Commission to confirm that CMRS carriers have an obligation to provide automatic roaming services to other carriers for the benefit of their subscribers on a just, reasonable, and non-discriminatory basis.⁷⁸ We are mindful of the ongoing complaints by small, regional and rural carriers against the nationwide carriers that, under current market conditions, it is getting more difficult for small and rural carriers to obtain access to nationwide carriers' networks through automatic roaming agreements.⁷⁹ For example, RTG reports that "small rural carriers have experienced a spike in the cost for their customers to roam on the nationwide carriers' network and an increased unwillingness by the nationwide carriers to enter into roaming agreements or renew existing ones."⁸⁰ Both Airpeak and SouthernLINC also describe the difficulties they have had obtaining roaming agreements from Sprint/Nextel and Nextel Partners.⁸¹ Our clarification that automatic roaming, as a common carrier service, is subject to protections outlined in Sections 201 and 202 of the Communications Act takes into account these public interest concerns and ensures that, ultimately, subscribers receive automatic roaming on just, reasonable and non-discriminatory terms. We also note that this clarification will alleviate some of the general concerns about roaming and roaming practices in the CMRS market that were raised previously in the context of the Commission's review and consideration of several wireless mergers, including Cingular/AT&T Wireless, ALLTEL/Western Wireless, and Sprint/Nextel.⁸²

29. Additionally, we determine that a reasonable request for automatic roaming will be limited to real-time, two-way switched voice or data services, provided by CMRS carriers, that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.⁸³ This ensures that all CMRS providers competing in the mass market for real-time, two-way voice and data services are similarly

⁷⁷ The obligation to provide automatic roaming is not reciprocal. Upon reasonable request, a host carrier is only required to provide automatic roaming to the subscribers of the requesting carrier. A reasonable request does not trigger any obligation for the host carrier to provide roaming for its own subscribers on the requesting carrier's network, or to negotiate a roaming agreement with the requesting carrier regarding such services.

⁷⁸ See generally, Leap Comments; SLO Cellular Comments; MetroPCS Comments; SouthernLINC Comments; SAFE Comments; NY3G Comments; RTG/OPASTCO Comments, ANB Comments, Centennial Comments, JSI Comments, Unicom Comments, NTCA Comments, ACS Comments, AIRPEAK/Airtel Joint Comments, NDNC Comments, NTCA Comments, RCA Comments, Cleveland Unlimited Comments, Punxsutawney Comments, Suncom Comments.

⁷⁹ See, e.g., RTG Comments at 10; Leap Reply Comments at 7; Airpeak Comments at 6-8; and SouthernLINC Comments at 11-15.

⁸⁰ See RTG Comments at 10; Leap Reply Comments at 7.

⁸¹ See Airpeak Comments at 6-8; SouthernLINC Comments at 11-15.

⁸² In approving the merger proposals and addressing concerns raised by smaller carriers, the Commission noted that "our manual roaming rule requires other carriers to complete calls initiated by Cingular's [ALLTEL's or Sprint's] customers where Cingular [ALLTEL or Sprint] cannot because it has neither its own signal nor an automatic agreement." See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182; *ALLTEL-WWC Order*, 20 FCC Rcd 13093 at ¶ 108; and *Sprint Nextel Order*, 20 FCC Rcd at 14012-13 ¶ 127. In addition, to further ensure compliance, the Commission stated that "we adopt as a condition to our grant in this Order a reciprocal duty, i.e., that Cingular [ALLTEL or Sprint] may not prevent its customers from reaching another carrier and completing their calls in these circumstances, unless specifically requested to do so by a subscriber. Finally in the future, if a roaming partner believes that Cingular [ALLTEL or Sprint] is charging unreasonable roaming rates, it can always file a complaint with the Commission under Section 208 of the Communications Act." See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182; *ALLTEL-WWC Order*, 20 FCC Rcd 13053 at ¶ 108; and *Sprint Nextel Order*, 20 FCC Rcd at 14012-13 ¶ 127.

⁸³ See *infra* section III.B.3 (non-interconnected services discussion). See also 47 U.S.C. §§ 153 and 332.

obligated to provide automatic roaming services, thereby equally benefiting all subscribers of mobile telephony services who seek to roam seamlessly over CMRS networks. We also conclude, as we have in prior proceedings, that an important indicator of a provider's ability to compete with other CMRS providers is whether the provider's system has "in-network" switching capability.⁸⁴ In-network switching facilities accommodate the reuse of frequencies in different portions of the same service area, thus enabling any CMRS provider to offer interconnected service to a larger group of customers and compete directly with other CMRS providers in the mass consumer market.⁸⁵

30. *Complaint Procedures.* Based on our finding that automatic roaming is a common carrier service, we determine that the provisioning of automatic roaming service is subject to Section 208 which provides that complaints may be filed with the Commission against common carriers subject to the Communications Act.⁸⁶ As discussed above and noted in the record, there has been some confusion regarding whether the provisioning of automatic roaming services is subject to the requirements of Section 208.⁸⁷ Given the fact-specific nature of the roaming issues that have come to light during this proceeding and several merger proceedings, we conclude that many disputes involving automatic roaming services would be best resolved through an adjudicatory process.⁸⁸ In deciding roaming complaints, we will consider whether a request is reasonable or whether the activity complained of is unjust and unreasonable based on the totality of the circumstances of the case.⁸⁹ When roaming-related complaints are filed, we intend to address them expeditiously on a case-by-case basis.

31. Further, we note that the Accelerated Docket procedure, including pre-complaint mediation, is available to roaming complaints.⁹⁰ Several commenters – including parties both supporting and opposing adoption of an automatic roaming rule – requested use of the Commission's Accelerated Docket procedures to resolve roaming complaints.⁹¹ Although all roaming complaints will not automatically be

⁸⁴ See *Interconnection and Resale Obligations MO&O*, 15 FCC Rcd at 15980 ¶ 15; *Telephone Number Portability Second Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21204, 21228-30 ¶¶ 52-57 (1998); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, 22703-04 ¶¶ 76-78.

⁸⁵ *Interconnection and Resale Obligations MO&O*, 15 FCC Rcd at 15980 ¶ 15.

⁸⁶ See 47 U.S.C. § 208.

⁸⁷ See AIRPEAK/Airtel Joint Comments at 8; Centennial Comments at 11; Leap Wireless Comments at 17-18; MetroPCS Comments at 21; NY3G Comments at 4; SLO Cellular Comments at 2; SouthernLINC Comments at 24-25.

⁸⁸ See, e.g., RCA Comments at 3-5 (calling for adoption of good-faith negotiation process similar to that required under SHVIA). Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues, *First Report and Order*, 15 FCC Rcd 5445, 5448 ¶ 6 (2000) (*SHVIA Order*) (stating, in the broadcast retransmission consent context, that a broadcaster could not refuse to negotiate, could not unreasonably delay a negotiation, and must offer considered reasons why it rejected an offer).

⁸⁹ See, e.g., Orloff v. Vodafone Airtouch, *Memorandum Opinion and Order*, 17 FCC Rcd 8987 (2002) (*Orloff*); *aff'd sub. nom.*, *Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003) (*Orloff Appeal*), *cert. denied*, 542 U.S. 937, 124 S.Ct. 2907, 159 L.Ed.2d 813 (2004). See also Digital Cellular, Inc. Petition for Declaratory Ruling Regarding a Primary Jurisdiction Referral from the United States District Court for the Central District of California, *Memorandum Opinion and Order*, 20 FCC Rcd 8723 (2005).

⁹⁰ See 47 C.F.R. §§ 1.721-1.736. See also Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, CC Docket No. 96-238, *Order on Reconsideration*, 13 FCC Rcd 17018 (2001).

⁹¹ For example, SouthernLINC recommends "automatic placement of all roaming complaints on the Enforcement Bureau's Accelerated Docket in order to provide for a sufficiently timely resolution of the complaint." SouthernLINC Comments at 51. See also T-Mobile Reply Comments at 9, n.40 (suggesting that the more efficient use of the Commission's existing enforcement mechanisms, such as the Accelerated Docket procedures, rather than an automatic roaming requirement, would be appropriate in what may be highly fact-based disputes). See also ACS

placed on the Accelerated Docket, an affected carrier can seek consideration of its complaint under the Commission's Accelerated Docket rules and procedures where appropriate.

32. Some commenters requested that the Commission amend the Accelerated Docket procedure rules such as giving Commission staff delegated authority to decide roaming proceedings on the Accelerated Docket.⁹² We note that when the Commission adopted the Accelerated Docket rules, it stated that “[c]ertain categories of issues that arise in Accelerated Docket proceedings will properly be the subject of delegated authority decisions by the Bureau. These issues will be those that fall outside of section 5(c)(1)⁹³ of the Act, and do not raise novel issues of law or policy.”⁹⁴ We see no reason to adopt a different policy with regard to issues arising in a roaming complaint proceeding.

33. *Reasonableness of Automatic Roaming Requests.* In order to provide some guidance as to the reasonableness of automatic roaming requests under Sections 201(b) and 202(a), we also establish today several rebuttable presumptions with respect to requests for automatic roaming and the would-be host carriers' response. We will presume a request for automatic roaming to be reasonable, in the first instance, if the requesting CMRS carriers' network is technologically compatible and the roaming request is for areas outside of the requesting carrier's home market.⁹⁵ As noted above, to be deemed reasonable, a request for automatic roaming may involve only those real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.⁹⁶ When a presumptively reasonable automatic roaming request is made, a would-be host CMRS carrier has a duty to respond to the request and avoid actions that unduly delay or stonewall the course of negotiations regarding that request. For example, following receipt of a reasonable automatic roaming request, evidence of a would-be host carrier's refusal to respond at all or a persistent pattern of stonewalling behavior will likely support a finding of a breach of the would-be host carrier's automatic roaming obligations.

34. The presumptions and examples of reasonableness cited above are not exhaustive, but rather are intended to provide some guidance to parties that may be participating in a section 208 complaint proceeding involving roaming services. CMRS carriers may argue that the Commission should consider other relevant factors in determining whether there is a violation of the automatic roaming obligations, based on the totality of the circumstances present in a particular case.

35. We reiterate that our general policy regarding CMRS services is to allow competitive market forces, rather than regulations, to promote the development of wireless services. On balance, taking into

Comments at 3-4 (requesting that the Commission create a 90-day dispute resolution process for customers denied roaming and carriers unable to negotiate roaming agreements.)

⁹² SouthernLINC and T-Mobile requested that the Commission adopt certain specific proposals to amend the Accelerated Docket procedures for roaming complaints, such as: delegating authority to staff to decide roaming proceedings on the Accelerated Docket; establishing a rebuttable presumption that roaming complaints are fast tracked; imposing a mandatory 21-day settlement; imposing expedited discovery of parties roaming agreements; and deciding roaming complaints within 90 days of receipt of complaint. SouthernLINC Ex Parte Letter, dated March 7, 2007, at 3; T-Mobile Ex Parte Letter, dated May 31, 2006 at 2-4; T-Mobile Reply Comments at 9. SouthernLINC also asked the Commission to reject some of the procedural amendments that T-Mobile requested. SouthernLINC Ex Parte Letter, dated March 7, 2007, at 4-11.

⁹³ 47 U.S.C. 155(c)(1).

⁹⁴ Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, *Second Report and Order*, 13 FCC Rcd 17018, 17070 ¶ 100 (1998) (citations omitted).

⁹⁵ See *infra* Section III.B.2 (in-market or home roaming discussion).

⁹⁶ See *infra* Section III.B.3 (non-interconnected services discussion). See also 47 U.S.C. §§ 153 and 332; 47 C.F.R. § 20.3.

consideration the concerns raised in the record by certain CMRS carriers⁹⁷ and our preference for allowing competitive market forces to govern rate and rate structures for wireless services, we expressly decline to impose any corresponding rate regulation of automatic roaming services as discussed more fully below. With our finding that automatic roaming is a common carrier service subject to protections in Section 201 and 202 of the Communications Act and the rebuttable presumptions we described above, we have confidence that our clarification, in conjunction with competitive market forces, will continue to foster the development of seamless automatic roaming services for all CMRS subscribers in the nation, and continue to result in a variety of just and reasonable pricing plans and service offerings.

Determination Not to Impose Rate Regulation on Roaming Agreements

Background.

36. In response to the *Reexamination NPRM*, some of the commenters supporting adoption of automatic roaming obligations also request that the Commission cap the rates that a carrier may charge other carriers for automatic roaming service based on some benchmark of retail rates.⁹⁸ Some of these commenters have also submitted economic analyses in support of their proposals.⁹⁹ Other commenters oppose any rate regulation and, in turn, have submitted their own economic analyses disputing the theory and evidence used to justify the imposition of rate regulation.¹⁰⁰

Discussion.

37. We decline to impose a price cap or any other form of rate regulation on the fees carriers pay each other when one carrier's customer roams on another carrier's network. In particular, we are not persuaded that consumers would be harmed in the absence of a price cap or some other form of rate regulation. We believe that the better course, as established in this Report and Order, is that the rates individual carriers pay for automatic roaming services be determined in the marketplace through negotiations between the carriers, subject to the statutory requirement that any rates charged be reasonable and non-discriminatory.

38. We find that there is insufficient evidence to justify regulating the roaming rates of carriers, and that any harm to consumers in the absence of affirmative regulation in this regard is speculative. . . Moreover, with the clarifications we make herein with respect to automatic roaming, we find that consumers are protected from being harmed by the level and structure of roaming rates negotiated between carriers. Absent a finding that the existing level and structure of roaming rates harm consumers, regulation of rates for automatic roaming service is not warranted. Because we are not persuaded that the existing level and structure of roaming rates negotiated between carriers harm consumers of mobile

⁹⁷ See, e.g., Cingular Comments at i, 18-30; NDNC Comments at 3; Nextel Partners Comments at 5-6.

⁹⁸ See Leap Comments at 17, 19-20 (recommending that, in geographic areas where there are three or fewer facilities-based carriers from which the carrier seeking automatic roaming service could obtain such service, the Commission prohibit a facilities-based carrier from charging rates for automatic roaming that exceed the carrier's average retail revenue per minute for that area). See also SouthernLINC Comments at 49 (proposing that the Commission establish a presumption that a carrier's roaming rates in a region are unreasonable if they exceed the lowest prevailing per-minute retail rates that it charges its own subscribers in that region).

⁹⁹ See, e.g., Leap Comments, Attachment A (ERS Group, *Wholesale Pricing Methods of Nationwide Carriers Providing Commercial Mobile Radio Services: An Economic Analysis*); SouthernLINC Comments, Attachment B (R. Preston McAfee, *The Economics of Wholesale Roaming in CMRS Markets*); SouthernLINC Reply Comments, Attachment B (R. Preston McAfee, *The Economics of Wholesale Roaming in CMRS Markets: Reply Comments*); Leap Reply Comments, Attachment A (David S. Sibley, *The Existence of Regional, Technology-Specific Wholesale Antitrust Markets for Roaming Services*); Leap Reply Comments, Attachment B (ERS Group, *A Further Analysis of the Wholesale Pricing Methods of Nationwide Carriers Providing Commercial Mobile Radio Service*).

¹⁰⁰ See, e.g., Rosston/Sprint Nextel Comments; Rosston/Sprint Nextel Reply Comments; Hazlett/Cingular Reply Comments; Furchtgott-Roth/T-Mobile Reply Comments.

telephony services, we do not need to address the argument that the state of competition in the intermediate product market is such as to warrant rate regulation

39. Based on the foregoing considerations, we conclude that regulation of roaming rates is not warranted on economic grounds. In addition, however, we agree with concerns raised in the record that rate regulation has the potential to distort carriers' incentives and behavior with regard to pricing and investment in network buildout.¹⁰¹ Capping roaming rates by tying them to a benchmark based on larger carriers' retail rates may diminish larger carriers' incentives to lower retail prices paid by their customers, and perhaps even give them an incentive to raise retail rates. At the same time, by requiring larger carriers to offer national roaming coverage to their competitors' customers at nearly the same rates offered to their own customers, this form of rate regulation may also give smaller regional carriers an incentive to reduce, or even eliminate, the discounts they offer on regional calling plans, thereby driving up the prices regional subscribers pay for calls within their plan's calling area.

40. Similarly, regulation to reduce roaming rates has the potential to deter investment in network deployment by impairing buildout incentives facing both small and large carriers. By enabling smaller regional carriers to offer their customers national roaming coverage at more favorable rates without having to build a nationwide network, rate regulation would tend to diminish smaller carriers' incentives to expand the geographic coverage of their networks. In addition, by reducing or eliminating any competitive advantage gained as a result of building out nationwide or large regional networks, rate regulation would impair larger carriers' incentives to expand, maintain, and upgrade their existing networks.¹⁰²

OTHER ISSUES

41. The following discussion addresses other issues related to automatic roaming raised by commenters in the record, including: "most favored" roaming partner rates for Tier IV CMRS carriers, in-market or home roaming issues, access to non-interconnected features and enhanced digital networks, and public filing of roaming rates.

"Most Favored" Roaming Partner Rates for Tier IV CMRS Providers

42. *Background.* Rural Telecommunications Group (RTG) and Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹⁰³ ask the Commission to create a Tier IV category of CMRS providers that have fewer than 100,000 customers, and state that the Commission should require large, nationwide carriers to offer the same reasonable roaming arrangements to Tier IV providers as they offer to their "most favored" roaming partners.¹⁰⁴ RTG argues that this

¹⁰¹ See, e.g., Rosston/Sprint Nextel Comments at 3, 17, 19-21, 28, 30; Hazlett/Cingular Reply Comments at 9-10, 19; T-Mobile Reply Comments at 15-17; Rosston/Sprint Nextel Reply Comments at 13-14.

¹⁰² We note that supporters of rate regulation argue that a price cap based on a benchmark of retail rates (RPM) would not discourage nationwide carriers from building out their networks or otherwise impede their ability to provide mobile services. This is because the price cap does not deduct for the costs of customer acquisition, billing and customer care that carriers do not incur when selling automatic roaming services to other carriers and, therefore, would leave nationwide carriers with a considerably higher profit margin for providing intercarrier roaming services than they obtain from retail sales. See Leap Comments, Attachment A at 18. We concur with commenters that argue that this methodology is flawed. See Hazlett/Cingular Reply Comments at 9-10, 19-20.

¹⁰³ RTG asserts that it is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. OPASTCO claims that it is a national trade association representing over 550 small telecommunications carriers serving rural areas of the United States. It also states that All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37) and that more than half of OPASTCO members provide some form of wireless service. RTG and OPASTCO Joint Reply Comments at 1 n.1.

¹⁰⁴ See RTG and OPASTCO Joint Comments at 3-4 and 14-15.

measure is necessary as a check against the abuse of power in the roaming services market by large providers.¹⁰⁵ Regional as well as national CMRS providers oppose this request. They argue that such an approach would improperly establish disparate regulatory treatment of CMRS providers by imposing an arbitrary limit on the number of customers a provider services.¹⁰⁶

43. *Discussion.* Since our determination that automatic roaming is common carrier service applies to all CMRS providers regardless of size, we decline to adopt RTG and OPASTCO's request to create a special Tier IV category for roaming services. We also decline to adopt a rule requiring that large nationwide carriers offer the same roaming arrangements to Tier IV providers as they offer to their "most favored" roaming partners.

44. Because the need for automatic roaming services may not always be the same, and the value of roaming services may vary across different geographic markets due to differences in population and other factors affecting the supply and demand for roaming services, it is likely that automatic roaming rates will reasonably vary.¹⁰⁷ As discussed earlier, mobile services in the United States are differentiated based on price, as well as non-price attributes, including geographic coverage. Competition between mobile telephone pricing plans that are differentiated in these ways benefits consumers by allowing them to choose pricing plans that offer the best deal on the types of services they use most frequently.¹⁰⁸ Mandating that a subcategory of CMRS carriers (*i.e.*, Tier IV providers) are entitled to the same rates as "most favored" roaming partners and imposing this obligation on certain large CMRS carriers, without a clear demonstration of why such a requirement would serve the public interest, would distort competitive market conditions, resulting in unjust and unreasonable practices and discriminatory treatments.

45. Accordingly, we decline to mandate that a subcategory of CMRS carriers (*i.e.*, Tier IV providers) be entitled to the same rates as "most favored" roaming partners. We similarly decline to impose such an obligation on only certain larger CMRS carriers. Instead, we believe that our finding that automatic roaming rule is a common carrier service subject to provisions of Sections 201, 202 and 208 of the Communications Act and guidance as to rebuttable presumptions establishing the reasonableness of an automatic roaming request provide small CMRS carriers with an effective mechanism for recourse against unjust and unreasonable practices.

In-Market or Home Roaming

46. *Background:* In the *Reexamination NPRM*, the Commission sought comment on whether a carrier should be required to enter into an automatic roaming arrangement on a nondiscriminatory basis with a facilities-based competitor in the same market.¹⁰⁹ The Commission asked if such a requirement would diminish carriers' incentives for building out their networks and how an exception to an automatic roaming obligation that permits carriers to deny roaming agreements to in-market competitors could be administered, given the different geographic scope of wireless licenses.¹¹⁰

47. Verizon Wireless argues that a home roaming requirement would remove incentives for carriers to build out their own networks and would eliminate network quality, reliability and coverage as facets of wireless competition.¹¹¹ MetroPCS and SouthernLINC assert, however, that it defies logic that carriers would use in-market roaming in lieu of building out because such behavior would either reduce

¹⁰⁵ See Notice of *Ex Parte* Presentation by Bennet & Bennet on behalf of RTG, June 28, 2005, WT Docket No. 00-193.

¹⁰⁶ See Verizon Wireless Comments at 16-19; SouthernLINC Comments at 42; T-Mobile Reply Comments at 24; U.S. Cellular (USCC) Reply Comments at 19.

¹⁰⁷ See Sprint Comments, Rosston Declaration at 26-28.

¹⁰⁸ See roaming rate regulation discussion *supra* at Section III.A.

¹⁰⁹ See *Reexamination NPRM*, 20 FCC Rcd at 15060 ¶ 35.

¹¹⁰ See *id.*

¹¹¹ See Verizon Wireless Comments at 17-18; Verizon Wireless Reply Comments at 20.

profits or increase consumer prices.¹¹² Leap Wireless states that carriers should not be permitted to invoke in-market justifications to refuse automatic roaming agreements, especially in areas where regional carriers have no facilities.¹¹³ AIRPEAK and Airtel indicate that the technical complexities of in-market roaming are challenging and, as a result, they do not seek such a requirement.¹¹⁴

48. *Discussion:* We determine that our automatic roaming obligation does not include an in-market or home roaming requirement. We are not requiring a CMRS carrier to provide automatic roaming to a requesting CMRS carrier in a market where the CMRS carrier directly competes with the requesting CMRS carrier. Specifically, a CMRS carrier is not required to provide automatic roaming to a requesting CMRS carrier where the requesting CMRS carrier holds a wireless license or spectrum usage rights (e.g., spectrum leases) in the same geographic location as the would-be host CMRS carrier. In geographic areas outside of these overlapping areas or markets, however, a host carrier must comply with our automatic roaming requirement and provide this service in a manner consistent with the common carrier obligations of Sections 201 and 202 of the Communications Act.¹¹⁵

49. Contrary to certain carriers' contentions,¹¹⁶ we find that an automatic roaming request in the home area of a requesting CMRS carrier, the area where the requesting CMRS carrier has the spectrum to compete directly with the would-be host carrier, does not serve our public interest goals of encouraging facilities-based service and supporting consumer expectations of seamless coverage when traveling outside the home area. We agree with Cingular that, if a carrier is allowed to "piggy-back" on the network coverage of a competing carrier in the same market, then both carriers lose the incentive to build-out into high cost areas in order to achieve superior network coverage.¹¹⁷ If there is no competitive advantage associated with building out its network and expanding coverage into certain high cost areas, a carrier will not likely do so. Consequently, consumers may be disadvantaged by a lack of product differentiation, lower network quality, reliability and coverage. In other words, we believe that requiring home roaming could harm facilities-based competition and negatively affect build-out in these markets, thus, adversely impacting network quality, reliability and coverage. This conclusion, however, should not be construed as prohibiting a requesting carrier from seeking to negotiate a roaming agreement including such terms if desired, or a host carrier from providing a requesting CMRS carrier with in-market or home roaming should it chose to do so. We continue to encourage all CMRS carriers to negotiate desired terms and conditions of automatic roaming agreements, including automatic roaming in overlapping geographic markets.

50. For purposes of this exclusion from automatic roaming obligations, in-market or home roaming is defined as any geographic location where the would-be host carrier and the requesting CMRS carrier have wireless licenses or spectrum usage rights that could be used to provide CMRS that cover or overlap the same geographic location(s).¹¹⁸ Within these overlapping geographic areas, the would-be host carrier is not required to comply with an automatic roaming request.¹¹⁹ This in-market or home

¹¹² See MetroPCS Comments at 29; SouthernLINC Reply Comments at 41.

¹¹³ See Leap Wireless Comments at 15-16.

¹¹⁴ See AIRPEAK/Airtel Joint Comments at 9.

¹¹⁵ 47 U.S.C. §§ 201, 202.

¹¹⁶ See Leap Wireless Comments at 15; MetroPCS Comments at 29-30; SouthernLINC Reply Comments at 28, 41.

¹¹⁷ See Cingular Comments at 26. See also Verizon Wireless Comments at 17-18.

¹¹⁸ The overlapping geographic areas are excluded if the licenses and/or spectrum usage rights are, for example, in the cellular, covered SMR, PCS, 700 MHz or AWS bands.

¹¹⁹ For example, if the requesting carrier has a wireless license that is based on a Metropolitan Statistical Area (MSA) and the would-be host carrier has a wireless license that is based on an Economic Area (EA) and the geographic location of the requesting carrier's MSA is within the host carrier's EA, then the would-be host carrier is not required by our automatic roaming requirement to provide such service within the geographic location of the requesting carrier's MSA. With regard to the areas outside of the requesting carrier's MSA that fall within the host

roaming exclusion does not depend on the level of service the requesting CMRS carrier is providing in the overlapping geographic area. The exclusion applies regardless of whether the requesting CMRS carrier is providing no service, limited service, or state-of-the-art service.

51. Finally, we also determine that the automatic roaming obligation under Sections 201 and 202 and the home roaming exclusion are not intended to resurrect CMRS resale obligations.¹²⁰ CMRS resale entails a reseller's purchase of CMRS service provided by a facilities-based CMRS carrier in order to provide resold service within the same geographic market as the facilities-based CMRS provider.¹²¹ We note that the Commission's mandatory resale rule was sunset in 2002,¹²² and automatic roaming obligations can not be used as a backdoor way to create *de facto* mandatory resale obligations or virtual reseller networks.¹²³

Access to Certain Data Features and Enhanced Digital Networks

Access to push-to-talk, text messaging (SMS) and non-interconnected data features

52. *Background.* In the *Reexamination NPRM*, the Commission sought comment on access to push-to-talk, dispatch, or other data roaming.¹²⁴ The Commission asked whether an automatic roaming rule should require carriers to permit roaming access to all technical features of their systems, and/or require carriers to make the same features accessible to all of their roaming partners.¹²⁵ The Commission stated that this issue initially was raised by SouthernLINC in the proceeding addressing the Sprint-Nextel merger, and invited comments on this issue, including information on how common practices (such as those alleged by SouthernLINC) are within the industry.¹²⁶

53. In response to the *Reexamination NPRM*, SouthernLINC, AIRPEAK, and Airtel argue that data services should be included as part of an automatic roaming obligation because demand for data services is growing and its inclusion advances "ubiquitous access to mobile services."¹²⁷ SouthernLINC adds that there is a "market failure" because Sprint Nextel, the only nationwide iDEN-based service provider, will not provide data roaming access to SouthernLINC customers, but does provide such roaming services for customers of foreign iDEN carriers.¹²⁸ SouthernLINC contends that push-to-talk is highly valued by subscribers because it enables subscribers to establish private conferences on a one-to-one or one-to-many basis using a single handset that can be used for phone, paging, and wireless data

carrier's EA, however, the host carrier must provide automatic roaming in a manner that is consistent with the common carrier provisions of Sections 201 and 202 of the Communications Act.

¹²⁰ Resale has been described by the Commission as "an activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications services and facilities to the public (with or without adding value) for profit." Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, Docket No. 20097, *Report & Order*, 60 FCC 2d 261, 271 ¶ 17 (1976), *aff'd on recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom.*, *AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978).

¹²¹ See Cingular Comments at 8.

¹²² The CMRS Resale Rule expired at the close of November 24, 2002 pursuant to the sunset provision of the rule. 47 C.F.R. § 20.12(b) (1998).

¹²³ See 47 C.F.R. § 20.12; Sprint Nextel Comments at 19.

¹²⁴ See *Reexamination NPRM*, 20 FCC Rcd at 15060-61.

¹²⁵ See *id.* at 15060-61.

¹²⁶ See *id.*

¹²⁷ See SouthernLINC Comments at 13, 18, 48-49; SouthernLINC Reply Comments at 7, 41; AIRPEAK/Airtel Joint Comments at 7.

¹²⁸ See SouthernLINC Comments at 12-15.

services.¹²⁹ Sprint Nextel and Nextel Partners oppose adoption of an automatic roaming rule and maintain that they should not be obliged to assist a competitor.¹³⁰ They claim that to do so would be to relinquish competitive advantages that they have earned through legitimate business decisions and capital investment to differentiate their service.¹³¹ Further, Sprint Nextel argues that push-to-talk roaming necessitates costly changes to the network and would be difficult to implement and maintain.¹³²

54. *Discussion.* As discussed above, the scope of automatic roaming services includes only services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables providers to reuse frequencies and accomplish seamless hand-offs of subscriber calls. As discussed below, we find that it would serve the public interest to extend automatic roaming obligations to push-to-talk¹³³ and SMS. We decline at this time, however, to adopt a rule extending the automatic roaming obligation beyond that to offerings that do not fall within the scope of the automatic roaming services' definition, such as non-interconnected services or features.¹³⁴

55. With respect to push-to-talk and SMS, we note that such offerings are typically bundled as a feature on the handset with other CMRS services, such as real-time, two-way switched mobile voice or data, that are interconnected with the public switched network.¹³⁵ Provision of these features differs from one carrier to another, *i.e.*, push-to-talk and SMS are interconnected features or services in some instances, but non-interconnected in others, depending on the technology and network configuration chosen by the carriers. We are also aware that consumers consider push-to-talk and SMS as features that are typically offered as adjuncts to basic voice services, and expect the same seamless connectivity with respect to these features and capabilities as they travel outside their home network service areas. For these reasons, we find that it is in the public interest to impose an automatic roaming obligation on push-to-talk and SMS offerings, subject to several provisos. Namely, the requesting carrier must offer push-to-talk and SMS to its subscribers on its own home network,¹³⁶ push-to-talk and SMS roaming must be technically feasible; and any changes to the would-be host carrier's network that are necessary to accommodate push-to-talk and SMS roaming requests must be economically reasonable.

56. With respect to non-interconnected features or services,¹³⁷ we find that the record in this proceeding lacks a clear showing that it is in the public interest at this time to impose an automatic roaming obligation. While proponents of unrestricted data roaming have argued that requiring roaming access to the non-interconnected features of a competitor's network would benefit consumers by providing greater availability for data features that are increasingly used by consumers, opponents are concerned that it might undercut incentives to differentiate products and could chill innovation.¹³⁸ These opponents claim that extending roaming to non-interconnected features of a competitors' network may also adversely affect business decisions to build out facilities for facilities-based competition and reduce the incentives to access the spectrum through other means such as initial spectrum licensing or secondary markets. In light of these diverse views, we believe it is in the public interest, however, to examine the

¹²⁹ See SouthernLINC Comments, Attachment A at 7.

¹³⁰ See Sprint Nextel Comments at 2-4 and 17-21; Nextel Partners Reply Comments at 1-3.

¹³¹ See Sprint Nextel Comments at 17-21; Nextel Partners Reply Comments at 3.

¹³² See Sprint Nextel Reply Comments at 16-17.

¹³³ We note that some cellular and broadband PCS carriers offer push-to-talk functionality via the public switched network. See *e.g.*, *Eleventh Report*, at 10973; *Sprint Nextel Order*, 20 FCC Rcd at 13987-13989 ¶¶ 46-50.

¹³⁴ We note that nothing in this order should be construed as addressing regulatory classifications of push-to-talk, SMS or other data features/services.

¹³⁵ See, *e.g.*, *Sprint Nextel Order*, 20 FCC Rcd at 13987 ¶ 46. See also SouthernLINC Comments at 52.

¹³⁶ See, *e.g.*, SouthernLINC Reply Comments at 30.

¹³⁷ See *infra* Section III.B.4.b.

¹³⁸ Verizon Wireless Comments at 22; Verizon Wireless Reply Comments at 24-25.

issue of automatic roaming for non-interconnected features or services through a Further Notice of Proposed Rulemaking, which is included in this item.¹³⁹

Access to Enhanced Digital Networks

57. *Background.* In the *Reexamination NPRM*, the Commission stated that until recently, carriers' networks consisted primarily of second generation or "2G" digital technology, which provided voice and limited data service.¹⁴⁰ The Commission asked, if the Commission were to apply some form of automatic roaming requirement to 2G systems, whether that requirement should also apply to upgraded enhanced digital networks, such as 2.5G or 3G systems.¹⁴¹ Recognizing that a competitive marketplace ordinarily encourages providers to invest capital to upgrade their networks, bringing the most modern services to their customers, the Commission asked, *inter alia*, what impact an automatic roaming requirement would have on the incentive of CMRS providers to invest in such upgrades.¹⁴²

58. Most parties who participated in the roaming proceeding do not directly address automatic roaming on upgraded enhanced digital networks. Of those commenters who addressed data roaming services, the majority oppose extending automatic roaming to data services using enhanced digital networks.¹⁴³

59. A few CMRS providers, however, requested that the Commission require automatic roaming for all services, including non-interconnected data services provided over enhanced digital networks.¹⁴⁴ ACS and MetroPCS contend that an automatic roaming requirement should apply to all enhanced data services, including services using EV-DO technology.¹⁴⁵ Of these two entities, however, only ACS asserts that it has deployed an EV-DO network capable of delivering mobile wireless broadband Internet access services.¹⁴⁶ ACS contends that it has not been able to enter into an automatic roaming agreement with national providers who have also developed EV-DO networks.¹⁴⁷ According to ACS, this is due to a lack of market driven incentives sufficient to encourage comprehensive provision of wireless enhanced data services.¹⁴⁸ EDGE, a small provider with fewer than 150,000 subscribers, requests that the Commission continue to abstain from imposing automatic roaming rules for enhanced data services using EDGE and GPRS technologies.¹⁴⁹ EDGE argues that forced roaming would thwart market forces by

¹³⁹ See *e.g.*, Verizon Wireless Comments at 22; Verizon Wireless Reply Comments at 24-25; EDGE Reply Comments at 8-9; NDNC Comments at 3.

¹⁴⁰ See *Reexamination NPRM*, 20 FCC Rcd at 15063 ¶ 44.

¹⁴¹ The Commission stated that, in addition to providing more voice calling capacity, such enhanced digital networks "enable carriers to provide various services, such as text messaging, Internet downloads, video transmissions, and e-mail communications. GSM carriers are upgrading their networks to include General Packet Radio Services (GPRS) and Enhanced Data Rates for GSM Evolution (EDGE) technologies, and CDMA carriers are upgrading their networks to include CDMA2000 1xRTT technology. In the future, GSM carriers will employ Wideband CDMA, and CDMA carriers will employ Evolution Data Only (EV-DO) and Evolution-Data and Voice (EV-DV) systems to provide even greater enhancements to their networks." See *Reexamination NPRM*, 20 FCC Rcd at 15063 n.95.

¹⁴² See *Reexamination NPRM*, 20 FCC Rcd at 15063 ¶ 45.

¹⁴³ See ALLTEL Reply Comments at 8; Cingular Reply Comments at 3 & n.8; EDGE Reply Comments at 8-9; Nextel Partners Comments at 12; Sprint Reply Comments at 19-20; T-Mobile Comments at 16; T-Mobile Reply Comments at 14; Verizon Wireless Comments at 22; Verizon Wireless Reply Comments at 24-25.

¹⁴⁴ See ACS Comments at 6; MetroPCS Comments at 25 n.58.

¹⁴⁵ See *id.*

¹⁴⁶ See ACS Comments at 4.

¹⁴⁷ See *id.*

¹⁴⁸ See *id.*

¹⁴⁹ See EDGE Reply Comments at 1, 8.

benefiting only those providers that have opted to invest less on their systems.¹⁵⁰

60. *Discussion.* As we explained earlier in this Report and Order, the automatic roaming obligation applies to real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables providers to reuse frequencies and accomplish seamless hand-offs of subscriber calls.¹⁵¹ As discussed above with respect to non-interconnected services, we similarly decline at this time to extend the scope of the automatic roaming services definition to include non-interconnected services provided over enhanced digital networks, such as wireless broadband Internet access. We find that automatic roaming, as a common carrier obligation, does not extend to services that are classified as information services or to other wireless services that are not CMRS.¹⁵² While we find that, based on the current record, it is premature to impose any roaming obligation regarding enhanced data services that are not CMRS and not interconnected to the public switched network, we will examine this matter further in the Further Notice of Proposed Rulemaking included in this item.

Public Filing of Roaming Rates

61. *Background.* In its comments, MetroPCS requests that the Commission require the public filing of roaming agreements. It notes that current remedies are inadequate due to the lack of any publicly-available information concerning the terms and conditions under which national CMRS carriers offer roaming to each other, their respective affiliates, or unaffiliated carriers.¹⁵³

62. *Discussion.* We decline to impose an affirmative obligation on CMRS carriers to post their roaming rates. As is generally the case with commercial agreements, roaming agreements are confidential and filing them would impose administrative costs on the carriers.¹⁵⁴ In light of our adoption of an automatic roaming rule as discussed below, we find that the available remedies for redress are sufficient to address disputes that may arise. Therefore, we need not burden CMRS carriers by requiring them to file roaming agreements. Furthermore, disclosure of roaming agreements would enable CMRS carriers to ascertain competitors' prices which could encourage carriers to maintain artificially high rates.¹⁵⁵ In a market where competition disciplines the rates, creating transparency in rates may have the effect of restricting competition and raising rates above competitive levels.¹⁵⁶ Therefore, we do not find that the public interest would be served by requiring CMRS carriers to disclose their agreements or to undertake the costs required to make them public.

¹⁵⁰ See *id.* at 9; see also, NDNC Comments at 3 (arguing against automating roaming rules because they create a disincentive for companies to further develop their networks).

¹⁵¹ See *supra* ¶ 1.

¹⁵² See *Wireless Broadband Internet Access Declaratory Ruling*, 22 FCC Rcd at 5906 ¶¶ 11-12.

¹⁵³ See Metro PCS Comments at 26-27; Cleveland Unlimited Reply Comments at 8 (agreeing with Metro PCS that roaming agreements should be made public). See also Metro PCS *Ex Parte* dated February 7, 2006 wherein it requested that the Commission compel all carriers large and small to provide complete information regarding their existing roaming arrangements and roaming policies. However, SouthernLINC argued that the Commission should not require the posting of all the roaming agreements, indicating that the Commission and other parties should rely on the "publicly available information." SouthernLINC Reply Comments at 18.

¹⁵⁴ See Implementation of Section 3(n) and 332 of the Communications Act, *Second Report and Order*, 9 FCC Rcd 1411, 1478-1480 ¶¶ 175-179 (1994) (*CMRS Second Report and Order*).

¹⁵⁵ See *CMRS Second Report and Order*, 9 FCC Rcd 1478-1480 ¶¶ 175-179 (declining to impose tariffs on CMRS carriers, in part, because it would allow carriers to maintain artificially high rates); see also, Department of Justice/Federal Trade Commission Merger Guidelines § 2.1 (the amount of information available to companies could be relevant to the companies' abilities to engage in anticompetitive behavior).

¹⁵⁶ See *id.*

CODIFICATION OF AUTOMATIC ROAMING OBLIGATIONS

63. In this Report and Order, we codify the CMRS carriers' automatic roaming obligation into a rule requiring that CMRS carriers provide automatic roaming to any requesting technologically compatible CMRS carrier outside of the requesting carrier's home market on reasonable and nondiscriminatory terms and conditions. Based on the record before us, we determine that, similar to the manual roaming rule, it would serve the public interest to codify an automatic roaming rule imposing an affirmative obligation to provide automatic roaming on CMRS carriers that offer real-time, two-way switched voice or data service over digital network that is interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. This ruling is based on our recognition that automatic roaming benefits mobile telephony subscribers by promoting seamless CMRS service around the country and reducing inconsistent coverage and service qualities.¹⁵⁷

64. Codification of this requirement is also particularly relevant for rural areas.¹⁵⁸ Many smaller and regional CMRS carriers urge the Commission to adopt an automatic roaming rule, confirming that CMRS carriers have an affirmative obligation to provide automatic roaming service to other CMRS carriers on a just, reasonable, and non-discriminatory basis.¹⁵⁹

65. The record reflects a number of ongoing complaints by small, regional and rural CMRS carriers against the nationwide CMRS carriers. These small and rural carriers assert that under current market conditions, it is getting more difficult for them to obtain access to nationwide carriers' networks through automatic roaming agreements. For example, RTG reports that "small rural carriers have experienced a spike in the cost for their customers to roam on the nationwide carriers' network and an increased unwillingness by the nationwide carriers to enter into roaming agreements or renew existing ones."¹⁶⁰ Both Airpeak and SouthernLINC also describe the difficulties they have had obtaining roaming agreements from Sprint/Nextel and Nextel Partners.¹⁶¹

66. We codify the automatic roaming obligations of CMRS carriers into a rule requiring that they provide automatic roaming to any requesting technologically compatible CMRS carrier outside of the requesting CMRS carrier's home market on reasonable and nondiscriminatory terms and conditions.¹⁶² This rule applies to CMRS carriers that offer real-time, two-way switched voice or data service over digital network that is interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. We also note that codification of an automatic roaming obligation gives CMRS carriers another avenue to redress roaming disputes, benefiting mobile telephony subscribers.

67. Finally, we clarify that automatic roaming, pursuant to Sections 201 and 202, as a common

¹⁵⁷ See ACS Comments at 1-2; SLO Cellular Reply Comments at 5; Navajo Nation Comments at 5 in WT Docket No. 06-156.

¹⁵⁸ See 47 U.S.C. §§ 301, 303(c), 332.

¹⁵⁹ See generally Leap Comments; SLO Cellular Comments; MetroPCS Comments; SouthernLINC Comments; Safety and Frequency Equity Competition Coalition (SAFE) Comments; NY3G Partnership (NY3G) Comments; Comments of Organization for the Promotion Advancement of Small Telecommunications Companies (RTG/OPASTCO), Alaska Native Broadband 1 License, LLC (ANB), Centennial, John Staurulakis, Inc. (JSI), Unicom, National Telecommunications Cooperative Association (NTCA), ACS Wireless, Inc. (ACS), AIRPEAK Communications, LLC and Airtel Wireless, LLC, Joint Comments (AIRPEAK/Airtel Joint Comments), North Dakota Network Company (NDNC), NTCA, RCA, Cleveland Unlimited, Inc. (Cleveland Unlimited), Punxsutawney Communications (Punxsutawney), Suncom Wireless (Suncom).

¹⁶⁰ RTG Comments at 10; Leap Reply Comments at 7.

¹⁶¹ See Airpeak Comments at 6-8; SouthernLINC Comments at 11-15.

¹⁶² See ACS Comments at 1-2; SLO Cellular Reply Comments at 5; Navajo Nation Comments at 5 in WT Docket No. 06-156.

carrier obligation applies to CMRS carriers' analog networks. We do not find, however, that it is necessary to codify this obligation into a specific rule. With the sunset of the analog service requirement on February 18, 2008, there would be little benefit to a codified automatic roaming rule for analog networks that might potentially apply between now and that date.¹⁶³ Individual carriers may, of course, enter into automatic roaming agreements for their analog networks, and any allegations that particular practices on analog networks are unjust, unreasonable or otherwise in violation of Sections 201 and 202 of the Communications Act would be subject to the complaint process of Section 208 of the Communications Act.

PETITION FOR INVESTIGATION PURSUANT TO SECTION 403 OF THE ACT

68. On April 25, 2006, pursuant to Section 403 of the Act,¹⁶⁴ AIRPEAK, Airtel, Cleveland Unlimited, Leap Wireless, MetroPCS, Punxsutawney, RTG, and SouthernLINC filed a joint petition that asks the Commission to initiate an inquiry for the purpose of gathering and inspecting a representative sample of wireless carrier roaming agreements on a confidential basis.¹⁶⁵ On May 5, 2006, Oppositions to the Joint Petition were filed by Cingular, Sprint/Nextel and Verizon Wireless.¹⁶⁶ On May 12, 2006, the Petitioners filed a Reply to Oppositions.¹⁶⁷ In light of our adoption of an automatic roaming rule today and related clarifications, we deny the Joint Petition.

69. *Background.* The parties who filed the Joint Petition request that the Commission impose an automatic roaming requirement.¹⁶⁸ Petitioners argue that there is a sharp disagreement between the large national providers and smaller local and regional providers as to whether roaming services are being made available on reasonable non-discriminatory terms.¹⁶⁹ Petitioners reason that the "best evidence" to resolve this dispute is to review a representative sample of the actual roaming agreements.¹⁷⁰ To that end, they request that the Commission require that carriers file these agreements with the Commission for review and inspection.

70. Cingular, Sprint/Nextel and Verizon Wireless oppose the Joint Petition. They make the following arguments: the record in the proceeding is sufficient for the Commission to decide whether an automatic roaming rule is necessary;¹⁷¹ without a comprehensive review of the facts of the circumstances

¹⁶³ In 2002, the Commission found that it was in the public interest to no longer require carriers to continue to provide analog service after February 18, 2008. See Year 2000 Biennial Regulatory Review—Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, *Report and Order*, WT Docket No. 01-108, 18 FCC Rcd 490 ¶ 22 (2002) ("2000 Biennial Review R & O"). See also 47 C.F.R. § 22.901(b) and Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters, RM No. 11355, *Memorandum Opinion and Order*, FCC 07-103 (rel. June 15, 2007) (denying an alarm industry petition seeking a two-year extension of the February 18, 2008 sunset of the cellular licensee analog service requirement).

¹⁶⁴ Section 403 of the Communications Act provides, in pertinent part, that "[t]he Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing . . . under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act." See 47 U.S.C. § 403. Consistent with this statutory language, the Commission has held that it has broad discretion whether to institute a Section 403 inquiry. See *In the Matter of James A. Kay, Jr.*, *Memorandum Opinion & Order*, 13 FCC Rcd 16369, 16373 ¶ 10 (1998).

¹⁶⁵ See Joint Petition.

¹⁶⁶ See Cingular Opposition to Joint Petition for Commission Inquiry, WT Docket No. 05-265, filed May 5, 2006; Sprint Nextel Opposition to Joint Petition for Section 403 Investigation, WT Docket No. 05-265, filed May 5, 2006; Verizon Wireless Opposition to Joint Petition for Commission Inquiry, WT Docket No. 05-265, filed May 5, 2006.

¹⁶⁷ See Reply to Oppositions, WT Docket No. 05-265, filed May 12, 2006.

¹⁶⁸ See Joint Petition at 5.

¹⁶⁹ See *id.*

¹⁷⁰ See *id.*

¹⁷¹ See Cingular Opposition at 3; Sprint Opposition at 1; Verizon Wireless Opposition at 2.

leading to the terms of the roaming agreements, a review of the roaming agreements alone does not conclusively establish whether the terms were reasonable,¹⁷² and a requirement to file the agreements would impose a substantial burden on providers and jeopardize confidential market sensitive information.¹⁷³

71. *Discussion.* Because we find that the record is sufficient to codify automatic roaming obligations of CMRS carriers, we deny the Joint Petition. Petitioners contend that a Section 403 inquiry will assist the Commission in gathering necessary information to support the adoption of an automatic roaming rule and further supplement the record in this proceeding.¹⁷⁴ In light of our codification of automatic roaming obligations today and related findings, parties who wish to challenge the proposed terms of a roaming agreement as unreasonably discriminatory or unjust can file complaints before the Commission on a case-by-case basis.¹⁷⁵ The Commission has broad discretion to obtain any relevant information to resolve such complaints at that time, if needed.¹⁷⁶ Therefore, we deny the Joint Petition.

MANUAL ROAMING

72. *Background.* The *Reexamination NPRM* sought current information about the continued utility of the manual roaming rule.¹⁷⁷ The *Reexamination NPRM* explained that the Commission was aware of at least two ways to conduct manual roaming. In its simplest form, a host system uses information from the roaming mobile unit during a call setup to determine whether the unit is a subscriber in the market and, if not, routes the call to a third party for operator assistance, payment arrangements, and completion of the call. In a more complex form, the host system uses the information to identify the unit's home carrier and determine whether that carrier has a roaming agreement in place with the host carrier. If no agreement exists, the host carrier routes the call to a third party to complete the steps needed for call completion as described above. In either case, roaming can occur only if the unit is technologically compatible with the host system.¹⁷⁸ The *Reexamination NPRM* sought comment on how often subscribers avail themselves of manual roaming in either of its two forms or other forms, if available. In light of both the evolution of the CMRS market and advancements in CMRS technologies, the *Reexamination NPRM* asked to what extent manual roaming had fallen into disuse or been replaced by automatic roaming and asked whether any manual roaming requirement that we retain in this proceeding should be subject to a sunset provision and, if so, when such a sunset should occur.¹⁷⁹ The *Reexamination NPRM* also sought comment on whether "the manual roaming rule should be kept to as a fallback for consumers when automatic roaming is unavailable."¹⁸⁰

73. The Commission received comments with diverging views on this issue. Many commenters oppose retention of the manual roaming rule for differing reasons.¹⁸¹ Some carriers who oppose adoption

¹⁷² See Cingular Opposition at 4; Sprint Opposition at 4; Verizon Wireless Opposition at 6.

¹⁷³ See Sprint Opposition at 5; Verizon Wireless Opposition at 8.

¹⁷⁴ See Joint Petition at 1, 5.

¹⁷⁵ See *supra* ¶¶ 24-26.

¹⁷⁶ See *Hi-Tech Furnace Systems, Inc. v. FCC*, 224 F.3d 781, 789 (D.C. Cir. 2000) (the Commission has broad discretion whether to grant discovery requests in section 208 proceedings); In the Matter of SBC Communications, Inc., *Apparent Liability for Forfeiture*, 17 FCC Rcd 7589, 7594 ¶ 11 (2002); Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Providers, *Report and Order*, 12 F.C.C.R. 22497, 22615 ¶ 291 n.782 (1997) (In any section 208 complaint proceeding, Commission staff may exercise its discretion to require a defendant carrier to present relevant information).

¹⁷⁷ See *Reexamination NPRM*, 20 FCC Rcd at 15056 ¶ 22.

¹⁷⁸ See *id.*

¹⁷⁹ *Reexamination NPRM*, 20 FCC Rcd at 15056 ¶¶ 23-24.

¹⁸⁰ *Reexamination NPRM*, 20 FCC Rcd at 15056 ¶ 23.

¹⁸¹ See, e.g., Verizon Wireless Comments at 2; Cingular Comments at 16; T-Mobile Comments at 12.

182

There are other commenters, however, who support adoption of an automatic roaming rule but oppose retention of the manual roaming rule, contending that manual roaming is insufficient to satisfy the needs of the consumers who expect seamless wireless service wherever they may go.¹⁸³ Other commenters argue that there is still a need for the manual roaming requirement for those situations in which a carrier cannot provide its subscribers with automatic roaming services in a certain geographic area, either because it has been unable to reach an agreement with the host carrier or because of technical issues with its own network.¹⁸⁴ Verisign, a provider of manual “roaming solutions,” requests retention of the manual roaming rule based on continuing need.¹⁸⁵

74. *Discussion.* We decline to sunset our existing manual roaming rule and, instead, retain it as a safety net for consumers.¹⁸⁶ We are aware that as automatic roaming becomes increasingly ubiquitous, it will render the need for manual roaming obsolete. We note, however, that the record demonstrates that automatic roaming is not available in certain instances today and, therefore, the continuing utility of our manual roaming rule in the immediate future is not completely obviated. For this reason, we will not sunset our manual roaming rule at this time.

75. Commenters, including those both for and against the adoption of an automatic roaming rule, have indicated that there could be geographic areas where carriers are not providing their customers with automatic roaming services because they have not yet entered into an automatic roaming services agreement with a host carrier that provides service in that area.¹⁸⁷ Further, the record establishes that consumers still seek manual roaming services. Verisign, for example, asserts that at least 18,000 manual roaming calls are completed each month and that consumers attempt to make 800,000 manual roaming calls per month.¹⁸⁸ Some carriers, such as Unicom, still rely on manual roaming for analog service and ask that manual roaming be continued until it has completed the process of replacing its old analog

¹⁸² Verizon Wireless Comments at 2; Cingular Comments at 16; T-Mobile Comments at 12. Sprint claims that automatic roaming has become so prevalent that it does not address manual roaming issues. Sprint Comments at 2 n.4; Sprint Reply Comments at 1 n.1.

¹⁸³ Leap Wireless Comments at 5; RTG and OPASTCO Joint Reply Comments at 9; SouthernLINC Comments at 32; USCC Comments at 7-10.

¹⁸⁴ See MetroPCS Comments at 3 (asserting the difficulty that MetroPCS has had in entering into automatic roaming agreements); *id.* at 20 (explaining that manual roaming is still necessary when an automatic roaming services agreement is not unavailable); Unicom Reply Comments at 2 (stating that Unicom is still in the process of transitioning its network from analog, which does not permit automatic roaming, to digital services), 9; Verisign Comments at 2-3 (asserting that consumers still make manual roaming calls).

¹⁸⁵ Verisign Comments at 2-3.

¹⁸⁶ We note that the scope of our existing manual roaming rule is limited to certain CMRS providers. However, as the Commission previously stated, “[a]llegations that particular practices by non-covered CMRS providers [*i.e.*, those not covered by the extended manual roaming rule] are unjust, unreasonable or otherwise in violation of the Communications Act would be grounds for complaint under Section 208 of that Act.” *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9471 ¶ 14.

¹⁸⁷ See Metro PCS Comments at 20 (stating that manual roaming should remain in place as a “safety net” for customers whose CMRS providers have not obtained an automatic roaming services agreement). NTCH Comments at 3-4 (explaining that it NTCH was not able to enter into a roaming agreement with another CDMA carrier until the Commission initiated the *Reexamination NPRM*); USCC Reply Comments at 9-10 (describing difficulties USCC has in entering into roaming agreements with Cingular, Sprint, and Nextel Partners); Sprint Comments at 17-18 (arguing that Sprint has no duty to enter into an agreement with a competitor). Cingular Reply Comments at 18 (arguing that Cingular cannot enter into roaming agreements with some carriers who have failed to upgrade their networks).

¹⁸⁸ Verisign Comments at 2.

equipment.¹⁸⁹ MetroPCS argues that retention of the manual roaming rule is necessary to provide a safety net in circumstances where an automatic roaming agreement is not in place.¹⁹⁰

76. Therefore, we retain the manual roaming rule as a safety net to ensure that subscribers can initiate a wireless call when they are outside of their service area through manual roaming if there is no automatic roaming agreement in place. As we have previously stated, consumers have come to expect seamless wireless service wherever they travel within the United States and, ultimately, this will be achieved through automatic roaming.¹⁹¹ We find that our codification of automatic roaming obligations, in conjunction with our determination that automatic roaming is a common carrier service, serves the public interest by enabling subscribers to seamlessly roam and, over time, the provision of automatic roaming will diminish the need for manual roaming.

FURTHER NOTICE OF PROPOSED RULEMAKING

77. In the Report and Order, we extend the automatic roaming requirement only to services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network, and to push-to-talk and text messaging.¹⁹² In this Further Notice of Proposed Rulemaking, we seek comment on whether we should extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services offered by CMRS carriers. Further, we seek comment on the implications of extending the automatic roaming obligation in this manner.

78. A number of parties argue that all mobile data services should be included as part of an automatic roaming obligation because demand for mobile data services is growing and its inclusion advances “ubiquitous access to mobile services.”¹⁹³ They argue that the market for data services is enormous and growing; data services have become indispensable business tools;¹⁹⁴ and data services provide critical back-up in times of emergency; and data services are essential tools for accessibility to certain segments of the population, such as the hearing-impaired community.¹⁹⁵ Other parties oppose adoption of an automatic roaming rule, as well as any extension of that rule to non-interconnected data services provided over enhanced digital networks.¹⁹⁶ They argue that mandating automatic roaming access to the non-interconnected features of a competitor’s network might undercut incentives to

¹⁸⁹ See Unicom Reply Comments at 2.

¹⁹⁰ See MetroPCS Comments at 20.

¹⁹¹ See *supra* ¶ 27.

¹⁹² See *supra* ¶¶ 2, 53-61.

¹⁹³ See SouthernLINC Comments at 13, 18, 48-49; SouthernLINC Reply Comments at 7, 41; AIRPEAK/Airtel Joint Comments at 7. See also Carrier Group Joint Letter *Ex Parte*, July 18, 2007 at 1-2. (The Joint Letter was filed by the following 26 carriers and carrier organizations: Southern Communications Services, Leap Wireless International, United States Cellular Corporation, Cellular South, Rural Cellular Association, Rural Telecommunications Group, National Telecommunications Cooperative Association, NTCH, Comcast Corp., Aloha Partners, Farmers Mutual Cooperative Telephone Company, Wireless Communications Venture, Copper Valley Wireless, Golden West Telecommunications Cooperative, Prairie Wave Communications, Clinton County Telephone, Roberts County Telephone Cooperative Association and RC Communications, McCook Cooperative Telephone Company and Tri-County Telecom, Fisher Wireless Services, AIRTEL Wireless, Coral Wireless, California RSA No. 3 Limited Partnership D/B/A Golden State Cellular, Matanuska Telephone Association, James Valley Cooperative Telephone Company, Oregon Farmers Mutual Telephone Co., Public Service Communications).

¹⁹⁴ See Carrier Group Joint *Ex Parte*, July 18, 2007 at 2.

¹⁹⁵ See, e.g., SouthernLINC *Ex Parte*, July 2 at 2-3.

¹⁹⁶ See ALLTEL Reply Comments at 8; Cingular Reply Comments at 3 & n.8; EDGE Reply Comments at 8-9; Nextel Partners Comments at 12; Sprint Reply Comments at 19-20; T-Mobile Comments at 16; T-Mobile Reply Comments at 14; Verizon Wireless Comments at 22; Verizon Wireless Reply Comments at 24-25.

differentiate products and could chill innovation.¹⁹⁷ They also argue that such a requirement could discourage build out of facilities for facilities-based competition and reduce the incentives to access the spectrum through other means such as initial spectrum licensing or secondary markets.¹⁹⁸

79. We seek comment on whether we should extend automatic roaming obligations to non-interconnected services and features, including information services, and on the legal and policy basis for doing so. As noted previously, allowing competitors in a marketplace to gain competitive advantage from their own innovations results in value to subscribers – in terms of new service offerings and features. To what extent, if any, would requiring roaming access to non-interconnected services and features undermine carriers' incentive to innovate, or to invest in mobile wireless broadband network facilities? Would the potential for undermining innovation be mitigated by conditioning roaming access to non-interconnected services and features, as we have, for example, with push-to-talk and SMS? Namely, should we require that the requesting carrier offer the requested service or feature to its subscribers on its own home network; that roaming must be technically feasible; and any changes to the would-be host carrier's network that are necessary to accommodate roaming requests extending to these services and features must be economically reasonable?

80. If the Commission were to extend automatic roaming obligations to non-interconnected services and features, are there any special issues (technical, economic, or otherwise) associated with roaming among data networks that may not exist when roaming among CMRS carriers' interconnected voice networks? For example, are there any issues regarding network capacity, network integrity, or network security? We seek comment on the effect that automatic roaming would have on the capacity of data networks and the ability of carriers to offer full access to their own customers. We would be concerned if requiring a carrier to offer roaming service on its data network to the customers of other carriers resulted in the carrier facing capacity constraints that adversely affect its own customers. We therefore ask whether a carrier should have the right to limit access to its network by roamers, and what parameters should be considered as justification for such limits. We invite commenters to suggest specific standards for determining when the requirement should or should not apply.

81. If the Commission were to extend automatic roaming obligations to non-interconnected services and features, should all such services and features be included? Are there any public interest reasons to treat narrowband and broadband data services differently in the context of automatic roaming?¹⁹⁹ In the *Wireless Broadband Classification Order*,²⁰⁰ we determined that mobile wireless broadband Internet access service is an information service, and that it is not CMRS. If we were to

¹⁹⁷ See, e.g., Verizon Wireless Comments at 22; Verizon Wireless Reply Comments at 24-25.

¹⁹⁸ See, e.g., EDGE Reply Comments at 9 (arguing that forced roaming would thwart market forces by benefiting only those providers that have opted to invest less on their system); NDNC Comments at 3 (arguing against automating roaming rules because they create a disincentive for companies to further develop their networks).

¹⁹⁹ We note that in the *Wireless Broadband Internet Access Declaratory Ruling*, the Commission stated that the item did not implicate narrowband data services (e.g., one-way paging) and defined the line between broadband and narrowband consistent with the Commission's definition in other contexts (i.e., services with over 200 kbps capability in at least one direction). See *Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks, Declaratory Ruling*, 22 FCC Rcd 5901, 5909, n. 55 (2007) (*Wireless Broadband Internet Access Declaratory Ruling*). See also e.g., *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14860 n.15; In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, *Second Report*, 15 FCC Rcd 20913, 20919-20 (2000) (*Second 706 Report*) (defining the term "high speed" to mean infrastructure capable of delivering a speed in excess of 200 kbps in at least one direction). Although this definition remains in effect today, the Commission may examine and modify it for future purposes. Cf. *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14860 n.15.

²⁰⁰ See generally, *Wireless Broadband Internet Access Declaratory Ruling*, 22 FCC Rcd 5901.

impose an automatic roaming obligation on mobile wireless broadband Internet access services, how could we do so in accordance with the determinations in that order? For example, could we base the requirement on Title I ancillary jurisdiction, or on the Title III regulation of radio services? Or should we restrict the automatic roaming mandate only to non-interconnected data services that are not classified as information services? We note that while a few CMRS providers have requested that the Commission require automatic roaming for all services, including non-interconnected data services provided over enhanced digital networks,²⁰¹ other CMRS providers, including several small carriers, are against imposing automatic roaming rules for enhanced data services, arguing that forced roaming would thwart market forces by benefiting only those providers that have opted to invest less in their systems.²⁰² Given these contradictory positions, what is the appropriate balance to be drawn between providing seamless service accessibility to end-users, and allowing service providers to gain competitive advantages from their investments and innovations?

PROCEDURAL MATTERS

Final Regulatory Flexibility Analysis

82. A Final Regulatory Flexibility Analysis has been prepared for the Report and Order and is included in Appendix C.

Initial Regulatory Flexibility Analysis

83. An Initial Regulatory Flexibility Analysis has been prepared for the Further Notice of Proposed Rulemaking and is included in Appendix D.

Ex Parte Presentations

84. The rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁰³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.²⁰⁴ Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission’s rules.²⁰⁵

Comment Filing Procedures

85. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules,²⁰⁶ interested parties may file comments on or before 60 days after publication of the Further Notice of Proposed Rulemaking in the Federal Register and reply comments regarding the Further Notice of Proposed Rulemaking may be filed on or before 90 days after publication of the Further Notice of Proposed Rulemaking in the Federal Register. All filings related to this Further Notice of Rulemaking should refer to WT Docket No. 05-265. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.²⁰⁷

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal:

²⁰¹ See ACS Comments at 6; MetroPCS Comments at 25 n.58.

²⁰² See e.g., EDGE Reply Comments at 1, 8-9; see also, NDNC Comments at 3 (arguing against automating roaming rules because they create a disincentive for companies to further develop their networks).

²⁰³ 47 C.F.R. §§ 1.200 *et. seq.*

²⁰⁴ See 47 C.F.R. § 1.1206(b)(2).

²⁰⁵ 47 C.F.R. § 1.1206(b).

²⁰⁶ 47 C.F.R. §§ 1.415, 1.419.

²⁰⁷ See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

<http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- ECFS filers must transmit one electronic copy of the comments for WT Docket No. 05-265. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and WT Docket No. 05-265. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC, 20554.
 - The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington DC 20554.

86. Parties should send a copy of their filings to: Christina Clearwater, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to christina.clearwater@fcc.gov and Won Kim, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to won.kim@fcc.gov. Parties shall also serve one copy with the Commission’s copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, Room CY-B402, 445 12th Street, S.W., Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

87. Documents in WT Docket No. 05-265 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

88. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 (voice), 202-418-0432 (TTY).

Paperwork Reduction Act

89. This document does not contain an information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.²⁰⁸

Congressional Review Act

90. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²⁰⁹

Contact Persons

91. For further information concerning this rulemaking proceeding, please contact Christina Clearwater, Spectrum and Competition Policy Division at 202-418-1893, Won Kim, Spectrum and Competition Policy Division at 202-418-1368, or Heidi Kroll, Spectrum and Competition Policy Division at 202-418-2361.

ORDERING CLAUSES

92. Accordingly, IT IS ORDERED THAT, pursuant to the authority contained in Sections 1, 4(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B), and Section 1.425 of the Commission’s rules, 47 C.F.R. § 1.425, this Report and Order and Further Notice of Rulemaking IS HEREBY ADOPTED.

93. IT IS FURTHER ORDERED THAT Sections 20.3 and 20.12 of the Commission’s rules ARE AMENDED as specified in Appendix A, and such rule amendments shall be effective 60 days after the date of publication of the text thereof in the Federal Register.

94. IT IS FURTHER ORDERED THAT the Joint Petition for Commission Inquiry Pursuant to Section 403 of the Communications Act filed by AIRPEAK Communications, LLC, Airtel Wireless LLC, Cleveland Unlimited, Inc., Leap Wireless International, Inc., MetroPCS Communications, Inc., Punxsutawney Communications, Rural Telecommunications Group, Inc., and Southern Communications Services, Inc. d/b/a SouthernLINC Wireless, on April 25, 2006 IS HEREBY DENIED.

95. IT IS FURTHER ORDERED THAT the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and the Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁰⁸ See 44 U.S.C. 3506(c)(4).

²⁰⁹ See 5 U.S.C. 801(a)(1)(A).

APPENDIX A**Final Rules**

1. The authority citation for Part 20 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 160, 251-254, 303 and 332 unless otherwise noted.

2. Section 20.3 is amended by adding the following terms in their alphabetically correct locations.

§ 20.3 Definitions.

* * * * *

Automatic Roaming. With automatic roaming, under a pre-existing contractual agreement between a subscriber's home carrier and a host carrier, a roaming subscriber is able to originate or terminate a call in the host carrier's service area without taking any special actions.

* * * * *

Home Carrier. For automatic roaming, a home carrier is the facilities-based CMRS carrier with which a subscriber has a direct contractual relationship. A home carrier may request automatic roaming service from a host carrier on behalf of its subscribers.

* * * * *

Home Market. For automatic roaming, a CMRS carrier's home market is defined as any geographic location where the home carrier has a wireless license or spectrum usage rights that could be used to provide CMRS.

* * * * *

Host Carrier. For automatic roaming, the host carrier is a facilities-based CMRS carrier on whose system a subscriber roams when outside its home carrier's home market.

* * * * *

Manual Roaming. With manual roaming, a subscriber must establish a relationship with the host carrier on whose system he or she wants to roam in order to make a call. Typically, the roaming subscriber accomplishes this in the course of attempting to originate a call by giving a valid credit card number to the carrier providing the roaming service.

* * * * *

3. Section 20.12 is amended by revising paragraphs (a) and (c) and adding paragraph (d) as follows:

§ 20.12 Resale and roaming.

(a)(1) *Scope of Manual Roaming and Resale.* Paragraph (c) of this section is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to re-use frequencies and accomplish seamless hand-offs of subscriber

calls. The scope of paragraph (b) of this section, concerning the resale rule, is further limited so as to exclude from the requirements of that paragraph those Broadband Personal Communications Services C, D, E, and F block licensees that do not own and control and are not owned and controlled by firms also holding cellular A or B block licenses.

(2) *Scope of Automatic Roaming.* Paragraph (d) of this section is applicable to CMRS carriers if such carriers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the carrier to re-use frequencies and accomplish seamless hand-offs of subscriber calls. Paragraph (d) of this section is also applicable to the provision of push-to-talk and text-messaging service by CMRS carriers.

* * * * *

(c) *Manual Roaming.* Each carrier subject to paragraph (a)(1) of this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to paragraph (a)(1) of this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

(d) *Automatic Roaming.* Upon a reasonable request, it shall be the duty of each host carrier subject to paragraph (a)(2) of this section to provide automatic roaming to any technologically compatible home carrier, outside of the requesting home carrier's home market, on reasonable and nondiscriminatory terms and conditions.

APPENDIX B**List of Commenters****Comments**

ACS Wireless, Inc. (ACS)
AIRPEAK Communications, LLC (AIRPEAK)
Airtel Wireless, LLC (Airtel)
Centennial Communications Corp. (Centennial)
Cingular Wireless (Cingular)
Leap Wireless International, Inc. (Leap)
MetroPCS Communications, Inc. (MetroPCS)
National Telecommunications Cooperative Association (NTCA)
Nextel Partners, Inc. (Nextel Partners)
North Dakota Network Co. (NDNC)
NTCH, Inc. (NTCH)
NY3G Partnership (NY3G)
Organization for the Promotion Advancement of Small Telecommunications Companies (RTG/OPASTCO)
Rural Cellular Association (RCA)
Rural Telecommunications Group, Inc.
Safety and Frequency Equity Competition Coalition (SAFE)
SouthernLINC Wireless (SouthernLINC)
Sprint Nextel
T-Mobile USA, Inc. (T-Mobile)
United States Cellular Corp. (USCC)
Verisign, Inc. (Verisign)
Verizon Wireless
William Powers

Reply Comments

AIRPEAK
Airtel
Alaska Native Broadband 1 License, LLC (ANB)
Alltel Corporation (Alltel)
Centennial
Cingular
Cleveland Unlimited, Inc. (CUI)
Commnet Wireless, LLC. (Commnet)
Edge Wireless, LLC (Edge)
John Staurulakis, Inc.
Leap
MetroPCS
Nextel Partners
NTCH
OPASTCO
Punxsutawney Communications, LLC (Punxsutawney)

RTG
SLO Cellular, Inc. (SLO)
SouthernLINC
Sprint Nextel
SunCom Wireless, Inc. (SunCom)
T-Mobile
Unicom, Inc. (Unicom)
USCC
Verizon Wireless
Wireless Communications Association International, Inc. (WCA)

Joint Section 403 Petition Commenters

Joint Petition: April 25, 2006

AIRPEAK
Airtel
Cleveland
Leap
MetroPCS
Punxsutawney
RTG
SouthernLINC

Oppositions: May 5, 2006

Cingular
Sprint/Nextel
Verizon Wireless

Reply: May 12, 2006

AIRPEAK
Airtel
Cleveland
Leap
MetroPCS
Punxsutawney
RTG
SouthernLINC

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in WT Docket No. 05-265.² The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. In the *Report and Order*, with regard to commercial services, the Commission takes an affirmative step to facilitate the provision of wireless services to consumers, especially those in rural areas, and to clarify our rules related to the roaming. The Commission clarifies that automatic roaming is a common carrier obligation for CMRS carriers, requiring them to provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act. The Commission reiterates its earlier determination that roaming is a common carrier service because roaming capability gives end users access to a foreign network in order to communicate messages of their own choosing. Thus, the provision of roaming is subject to the requirements of Section 201, 202, and 208 of the Communications Act.⁴

3. The Commission also finds that the common carrier obligation to provide roaming extends to services that are real-time, two-way switched voice or data service that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. The Commission notes that roaming, as a common carrier obligation, does not extend to services that are classified as information services or to services that are not CMRS.⁵

4. The Commission recognizes that today CMRS consumers increasingly rely on mobile telephony services and they reasonably expect to continue their wireless communications even when they are out of their home network area. Thus, the findings in this *Report and Order* with respect to CMRS providers' obligations regarding roaming services serve the public interest and safeguard wireless consumers' reasonable expectations of seamless continuous nationwide commercial mobile telephony services through roaming. The Commission also declines to sunset the existing manual roaming requirement at this time to provide additional flexibility for consumers.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, WT Docket No. 05-265, 20 FCC Rcd 15047, 15068 App. (2005) (“*MO&O*” and “*NPRM*,” respectively).

³ See 5 U.S.C. § 604.

⁴ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 05-265, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) (“*Reexamination NPRM*”); Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462, 9463-71 ¶¶ 1-14 (1996) (“*Interconnection and Resale Obligations Second Report and Order*” and “*Interconnection and Resale Obligations Third NPRM*,” respectively). See also 47 C.F.R. § 20.15. Section 332(c)(1) of the Act provides that a person engaged in the provision of a service that is a commercial mobile service shall be treated as a common carrier for purposes of the Act. See 47 U.S.C. § 332(c)(1).

⁵ Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, *Declaratory Ruling*, FCC No. 07-30, ¶¶ 11-12 (rel. Mar. 23, 2007) (“*Wireless Broadband Internet Access Declaratory Ruling*”).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments filed specifically in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁹

7. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this *Report and Order*. The Commission’s finding that automatic roaming is a common carrier service subject to protections outlined in sections 201, 202 and 208 of the Act affects all CMRS carriers that provide real-time, two-way switched voice or data service that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Such carriers are obligated to provide automatic roaming. As a common carrier obligation, the automatic roaming rule does not extend to non-interconnected services/features or services that are classified as information services or to services that are not CMRS.

8. Since this *Report and Order* applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission’s new rules, this FRFA provides information that describes auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

9. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”¹⁰ and “Cellular and Other Wireless Telecommunications.”¹¹ Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.¹² Of this total, 804 firms had

⁶ 5 U.S.C. § 604(a)(3).

⁷ 5 U.S.C. § 601(6).

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ 15 U.S.C. § 632.

¹⁰ 13 C.F.R. § 121.201, NAICS code 517211.

¹¹ 13 C.F.R. § 121.201, NAICS code 517212.

¹² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.¹³ Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.¹⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.¹⁵ Thus, under this second category and size standard, the majority of firms can, again, be considered small.

10. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category “Cellular and Other Wireless Telecommunications.”¹⁶ Under that SBA category, a business is small if it has 1,500 or fewer employees.¹⁷ For the census category of “Cellular and Other Wireless Telecommunications,” Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.¹⁸ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.¹⁹ Thus, under this category and size standard, the majority of firms can be considered small.

11. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.²⁰ For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²¹ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.²² No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.²³ On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.²⁴ On January 26, 2001, the Commission completed the auction of 422 C

¹³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

¹⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

¹⁵ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

¹⁶ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

¹⁷ *Id.*

¹⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

¹⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

²⁰ See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

²¹ See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

²² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

²³ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. January 14, 1997).

²⁴ See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

and F PCS licenses in Auction 35.²⁵ Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

12. *Narrowband Personal Communications Service.* The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.²⁶ Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.²⁷ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.²⁸ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.²⁹ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.³⁰ The SBA has approved these small business size standards.³¹ A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.³² Three of these claimed status as a small or very small entity and won 311 licenses.

13. *Specialized Mobile Radio.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.³³ The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.³⁴ The SBA has approved these small business size standards for the 900 MHz Service.³⁵ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38

²⁵ See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

²⁶ Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 ¶ 46 (1994).

²⁷ See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

²⁸ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

²⁹ *Id.*

³⁰ *Id.*

³¹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

³² See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

³³ 47 C.F.R. § 90.814(b)(1).

³⁴ *Id.*

³⁵ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

geographic area licenses for the upper 200 channels in the 800 MHz SMR band.³⁶ A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.³⁷

14. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed “small business” status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

15. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$3 million or \$15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed, *supra*). One firm has over \$15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

16. *Advanced Wireless Services.* In the *AWS-1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.³⁸ The *AWS-1 Report and Order* defines a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The *AWS-1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

17. *Rural Radiotelephone Service.* The Commission uses the SBA small business size standard applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.³⁹ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

18. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁴⁰ The SBA has approved these definitions.⁴¹ The Commission auctioned geographic area licenses in the

³⁶ See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

³⁷ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

³⁸ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-1 Report and Order*).

³⁹ 13 C.F.R. § 121.201, NAICS code 517212.

⁴⁰ Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

⁴¹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

19. 220 MHz Radio Service – Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz Band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.⁴² For the census category of “Cellular and Other Wireless Telecommunications,” Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.⁴³ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁴⁴ Thus, under this category and size standard, the majority of firms can be considered small.

20. 220 MHz Radio Service – Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁴⁵ This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁴⁶ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.⁴⁷ The SBA has approved these small size standards.⁴⁸ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁴⁹ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.⁵⁰ Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁵¹ A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.⁵²

21. 700 MHz Guard Band Licenses. In the *700 MHz Guard Band Order*, the Commission

⁴² 13 C.F.R. § 121.201, NAICS code 517212.

⁴³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

⁴⁴ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁵ Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997).

⁴⁶ *Id.* at 11068 ¶ 291.

⁴⁷ *Id.*

⁴⁸ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

⁴⁹ See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

⁵⁰ See “FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,” *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

⁵¹ See “Phase II 220 MHz Service Spectrum Auction Closes,” *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

⁵² See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵³ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁵⁴ Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁵⁵ SBA approval of these definitions is not required.⁵⁶ An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.⁵⁷ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.⁵⁸

22. Upper 700 MHz Band Licenses. The Commission released a *Report and Order* authorizing service in the Upper 700 MHz band.⁵⁹ An auction for these licenses, previously scheduled for January 13, 2003, was postponed.⁶⁰

⁵³ Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000). Service rules were amended in 2007, but no changes were made to small business size categories. See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007).

⁵⁴ *Id.* at 5343 ¶ 108.

⁵⁵ *Id.*

⁵⁶ *Id.* At 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

⁵⁷ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

⁵⁸ See “700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

⁵⁹ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001). Service rules were amended in 2007, but no changes were made to small business size categories. See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007).

⁶⁰ See “Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled,” *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

23. *Lower 700 MHz Band Licenses.* The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.⁶¹ The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁶² A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁶³ Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁶⁴ The SBA has approved these small size standards.⁶⁵ An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.⁶⁶ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.⁶⁷ Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.⁶⁸

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

24. The only reporting or recordkeeping costs to be incurred are administrative costs to ensure that an entity's practices are in compliance with the rule. The only compliance requirement is that CMRS carriers must provide automatic roaming to any requesting technologically compatible CMRS carrier outside of the requesting CMRS carrier's home market on reasonable and non-discriminatory terms and conditions. This rule applies to CMRS carriers that offer real-time, two-way switched voice or data service over digital network that is interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.⁶⁹

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for

⁶¹ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

⁶² *Id.* at 1087-88 ¶ 172.

⁶³ *Id.*

⁶⁴ *Id.* at 1088 ¶ 173.

⁶⁵ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

⁶⁶ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

⁶⁷ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

⁶⁸ *Id.*

⁶⁹ See *Report and Order*, *supra*, ¶¶ 28-29.

small entities.⁷⁰

26. In this *Report and Order*, the Commission clarifies that automatic roaming is a common carrier obligation for CMRS carriers, requiring them to provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act. In adopting this rule, the Commission determined that when a reasonable request is made by a technologically compatible CMRS carrier, a host CMRS carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier's home market, consistent with the protections of Sections 201 and 202 of the Communications Act.

27. In the *Report and Order*, the Commission finds that the scope of automatic roaming services includes only services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. In addition, the Commission determines that it would serve the public interest to extend automatic roaming obligation to push-to-talk and text messaging (SMS). However, the Commission declines to adopt a rule extending the automatic roaming obligation beyond that to offerings that do not fall within the scope of the automatic roaming services' definition, such as non-interconnected services or features or services that are classified as information services or to services that are not CMRS.⁷¹

28. In response to the *Reexamination NPRM*, some of the commenters requested that the Commission cap the rates that a carrier may charge other carriers for automatic roaming service based on some benchmark of retail rates.⁷² Some of these commenters have also submitted economic analyses in support of their proposals.⁷³ Other commenters oppose any rate regulation and, in turn, have submitted their own economic analyses disputing the theory and evidence used to justify the imposition of rate regulation.⁷⁴ In the *Report and Order*, the Commission declines to impose a price cap or any other form of rate regulation on the fees carriers pay each other when one carrier's customer roams on another carrier's network. The Commission believes that the rates individual carriers pay for automatic roaming services should be determined in the marketplace through negotiations between the carriers, subject to the statutory requirement that any rates charged be reasonable and non-discriminatory.

29. The Commission reiterates that the general policy regarding CMRS services is to allow competitive market forces, rather than regulations, to promote the development of wireless services. On

⁷⁰ See 5 U.S.C. § 603(c).

⁷¹ Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, *Declaratory Ruling*, FCC No. 07-30, ¶¶ 11-12 (rel. Mar. 23, 2007) (“*Wireless Broadband Internet Access Declaratory Ruling*”).

⁷² See Leap Comments at 17, 19-20 (recommending that, in geographic areas where there are three or fewer facilities-based carriers from which the carrier seeking automatic roaming service could obtain such service, the Commission prohibit a facilities-based carrier from charging rates for automatic roaming that exceed the carrier's average retail revenue per minute for that area). See also SouthernLINC Comments at 49 (proposing that the Commission establish a presumption that a carrier's roaming rates in a region are unreasonable if they exceed the lowest prevailing per-minute retail rates that it charges its own subscribers in that region).

⁷³ See, e.g., Leap Comments, Attachment A (ERS Group, *Wholesale Pricing Methods of Nationwide Carriers Providing Commercial Mobile Radio Services: An Economic Analysis*); SouthernLINC Comments, Attachment B (R. Preston McAfee, *The Economics of Wholesale Roaming in CMRS Markets*); SouthernLINC Reply Comments, Attachment B (R. Preston McAfee, *The Economics of Wholesale Roaming in CMRS Markets: Reply Comments*); Leap Reply Comments, Attachment A (David S. Sibley, *The Existence of Regional, Technology-Specific Wholesale Antitrust Markets for Roaming Services*); Leap Reply Comments, Attachment B (ERS Group, *A Further Analysis of the Wholesale Pricing Methods of Nationwide Carriers Providing Commercial Mobile Radio Service*).

⁷⁴ See, e.g., Rosston/Sprint Nextel Comments; Rosston/Sprint Nextel Reply Comments; Hazlett/Cingular Reply Comments; Furchtgott-Roth/T-Mobile Reply Comments.

balance, taking into consideration the concerns raised in the record by certain CMRS carriers⁷⁵ and its preference for allowing competitive market forces to govern rate and rate structures for wireless services, the Commission expressly declines to impose any corresponding rate regulation of automatic roaming services.

30. In the *Reexamination NPRM*, the Commission sought comment on whether a carrier should be required to enter into an automatic roaming arrangement on a nondiscriminatory basis with a facilities-based-competitor in the same market. In the *Report and Order*, the Commission determines that the automatic roaming obligation does not include an in-market or home roaming requirement. The Commission finds that an automatic roaming request in the home area of a requesting CMRS carrier, the area where the requesting CMRS carrier has the spectrum to compete directly with the would-be host carrier, does not serve public interest goals of encouraging facilities-based service and supporting consumer expectations of seamless coverage when traveling outside the home area.

31. In the *Reexamination NPRM*, the Commission sought comment on access to push-to-talk, dispatch, or other data roaming. Some carriers advocate that the Commission should adopt an automatic roaming rule that requires carriers to permit roaming access to all technical features of their systems, and/or require carriers to make the same features accessible to all of their roaming partners (e.g., push-to-talk, dispatch, text messaging (SMS) or other data roaming services). Based on the record, in the *Report and Order*, the Commission finds that it would serve public interest to extend automatic roaming obligations to push-to-talk and SMS. However, the Commission declines to adopt a rule extending the automatic roaming obligation beyond that to offerings that do not fall within the scope of the automatic roaming services' definition, such as non-interconnected services or features. With respect to push-to-talk and SMS, the Commission finds that such offerings are typically bundled as a feature on the handset with other CMRS services, such as real-time, two-way switched mobile voice or data, which are interconnected with the public switched network. Thus, consumers consider push-to-talk and SMS as features that are typically offered as adjuncts to basic voice services, and expect the same seamless connectivity with respect to these features and capabilities as they travel outside their home network service areas.

32. With respect to non-interconnected data service, the Commission finds that it is not in the public interest at this time to impose an automatic roaming obligation. In the absence of a clear showing in the record that it would serve the public interest, the Commission believes that open access to the non-interconnected features of a competitor's network might undercut incentives to differentiate products and could chill innovation. It may also adversely affect business decisions to build out facilities for facilities-based competition and reduce the incentives to access the spectrum through other means such as initial spectrum licensing or secondary markets. For these reasons, the Commission declines to impose an automatic roaming requirement on non-interconnected features, such as stand alone dispatch, at this time.

33. In the *Report and Order*, the Commission also declines to impose an affirmative obligation on CMRS carriers to post their roaming rates. The Commission notes that roaming agreements are generally confidential and filing them would impose administrative costs on the carriers. In light of the adoption of an automatic roaming rule, the Commission finds that the available remedies for redress are sufficient to address disputes that may arise. Therefore, the Commission finds it unnecessary to burden CMRS carriers by requiring them to file roaming agreements.

F. Report to Congress

34. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review

⁷⁵ See, e.g., Cingular Comments at i, 18-30; NDNC Comments at 3; Nextel Partners Comments at 5-6.

Act.⁷⁶ In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and the FRFA (or summaries thereof) will also be published in the Federal Register.⁷⁷

⁷⁶ See 5 U.S.C. § 801(a)(1)(A).

⁷⁷ See 5 U.S.C. § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (the “RFA”),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact of the policies and rules proposed in the *Further Notice of Proposed Rulemaking* (“*Further Notice*”) on a substantial number of small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice* provided in the item. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. Building on the decisions made in the *Report and Order*, the *Further Notice* encompasses issues concerning the applicability of the automatic roaming obligation for all wireless providers. In the *Report and Order*, the Commission clarifies that the automatic roaming is a common carrier obligation and adopts an automatic roaming rule that is applicable to services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network, and to push-to-talk and text messaging service.⁴ Recognizing wireless subscribers’ increasing reliance on mobile telephony services, especially the growing demand of data services by consumers, the *Further Notice* seeks comment on whether the Commission should extend the applicability of the automatic roaming requirements to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services. The *Further Notice* further seeks comment on the implications of extending the automatic roaming obligation in this manner. The Commission’s primary objective in this proceeding is to facilitate seamless wireless communications for consumers, even when they are outside of the coverage area of their own service providers.

3. In the *Further Notice*, the Commission notes that while a few CMRS providers have requested that the Commission require automatic roaming for all services, including non-interconnected data services provided over enhanced digital networks,⁵ other CMRS providers, including several small carriers, are against imposing automatic roaming rules for enhanced data services, arguing that forced roaming would thwart market forces by benefiting only those providers that have opted to invest less on their systems.⁶ Given these contradictory positions, the *Further Notice* seeks comments on what is the appropriate balance to be drawn between providing seamless service accessibility to end-users, and allowing service providers to gain competitive advantages from their investments and innovations.

B. Legal Basis

4. The authority for the actions taken in this *Further Notice* is contained in Sections 1, 4(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B).

¹ The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *See* 5 U.S.C. § 603(a).

³ *See* 5 U.S.C. § 603(a).

⁴ *See supra* ¶¶ 2, 65-67.

⁵ *See* ACS Comments at 6; MetroPCS Comments at 25 n.58.

⁶ *See e.g.*, EDGE Reply Comments at 1, 8-9; *see also*, NDNC Comments at 3 (arguing against automating roaming rules because they create a disincentive for companies to further develop their networks).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁰

6. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this *Report and Order*. The Commission’s finding that automatic roaming is a common carrier service subject to protections outlined in sections 201, 202 and 208 of the Act affects all CMRS carriers that provide real-time, two-way switched voice or data service that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Such carriers are obligated to provide automatic roaming. As a common carrier obligation, the automatic roaming rule does not extend to non-interconnected services/features or services that are classified as information services or to services that are not CMRS.

7. Since this *Report and Order* applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission’s new rules, this FRFA provides information that describes auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

8. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"¹¹ and "Cellular and Other Wireless Telecommunications."¹² Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.¹³ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.¹⁴ Thus, under this category and associated small business size standard, the majority of firms can be

⁷ 5 U.S.C. § 604(a)(3).

⁸ 5 U.S.C. § 601(6).

⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁰ 15 U.S.C. § 632.

¹¹ 13 C.F.R. § 121.201, NAICS code 517211.

¹² 13 C.F.R. § 121.201, NAICS code 517212.

¹³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

¹⁴ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.¹⁵ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.¹⁶ Thus, under this second category and size standard, the majority of firms can, again, be considered small.

9. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category “Cellular and Other Wireless Telecommunications.”¹⁷ Under that SBA category, a business is small if it has 1,500 or fewer employees.¹⁸ For the census category of “Cellular and Other Wireless Telecommunications,” Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.¹⁹ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.²⁰ Thus, under this category and size standard, the majority of firms can be considered small.

10. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.²¹ For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²² These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.²³ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.²⁴ On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.²⁵ On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.²⁶ Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

¹⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

¹⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

¹⁷ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

¹⁸ *Id.*

¹⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

²⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

²¹ See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

²² See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

²³ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

²⁴ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. January 14, 1997).

²⁵ See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

²⁶ See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

11. *Narrowband Personal Communications Service.* The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.²⁷ Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.²⁸ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.²⁹ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.³⁰ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.³¹ The SBA has approved these small business size standards.³² A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.³³ Three of these claimed status as a small or very small entity and won 311 licenses.

12. *Specialized Mobile Radio.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.³⁴ The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.³⁵ The SBA has approved these small business size standards for the 900 MHz Service.³⁶ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.³⁷ A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA

²⁷ Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 ¶ 46 (1994).

²⁸ See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

²⁹ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

³⁰ *Id.*

³¹ *Id.*

³² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

³³ See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

³⁴ 47 C.F.R. § 90.814(b)(1).

³⁵ *Id.*

³⁶ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

³⁷ See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

licenses. One bidder claiming small business status won five licenses.³⁸

13. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed “small business” status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

14. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$3 million or \$15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed, *supra*). One firm has over \$15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

15. *Advanced Wireless Services*. In the *AWS-1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.³⁹ The *AWS-1 Report and Order* defines a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The *AWS-1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

16. *Rural Radiotelephone Service*. The Commission uses the SBA small business size standard applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁰ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

17. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁴¹ The SBA has approved these definitions.⁴² The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

³⁸ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

³⁹ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-1 Report and Order*).

⁴⁰ 13 C.F.R. § 121.201, NAICS code 517212.

⁴¹ Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

⁴² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

18. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz Band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.⁴³ For the census category of “Cellular and Other Wireless Telecommunications,” Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.⁴⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁴⁵ Thus, under this category and size standard, the majority of firms can be considered small.

19. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁴⁶ This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁴⁷ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.⁴⁸ The SBA has approved these small size standards.⁴⁹ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁵⁰ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.⁵¹ Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁵² A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.⁵³

20. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵⁴ A small

⁴³ 13 C.F.R. § 121.201, NAICS code 517212.

⁴⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

⁴⁵ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁶ Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997).

⁴⁷ *Id.* at 11068 ¶ 291.

⁴⁸ *Id.*

⁴⁹ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

⁵⁰ See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

⁵¹ See “FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,” *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

⁵² See “Phase II 220 MHz Service Spectrum Auction Closes,” *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

⁵³ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

⁵⁴ Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000). Service rules were amended in 2007, but no changes were made to small

business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁵⁵ Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁵⁶ SBA approval of these definitions is not required.⁵⁷ An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.⁵⁸ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.⁵⁹

21. Upper 700 MHz Band Licenses. The Commission released a *Report and Order* authorizing service in the Upper 700 MHz band.⁶⁰ An auction for these licenses, previously scheduled for January 13, 2003, was postponed.⁶¹

22. Lower 700 MHz Band Licenses. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding

business size categories. See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007).

⁵⁵ *Id.* at 5343 ¶ 108.

⁵⁶ *Id.*

⁵⁷ *Id.* At 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

⁵⁸ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

⁵⁹ See “700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

⁶⁰ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001). Service rules were amended in 2007, but no changes were made to small business size categories. See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007).

⁶¹ See “Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled,” *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

credits.⁶² The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁶³ A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁶⁴ Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁶⁵ The SBA has approved these small size standards.⁶⁶ An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.⁶⁷ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.⁶⁸ Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.⁶⁹

23. Common Carrier Paging. The SBA has developed a small business size standard for wireless firms within the broad economic census category of "Paging."⁷⁰ Under this category, the SBA deems a business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.⁷¹ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁷² Thus, under this category, the majority of firms can be considered small. In the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷³ A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁷⁴ The SBA has approved these small business size standards.⁷⁵ An auction of

⁶² See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

⁶³ *Id.* at 1087-88 ¶ 172.

⁶⁴ *Id.*

⁶⁵ *Id.* at 1088 ¶ 173.

⁶⁶ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

⁶⁷ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

⁶⁸ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

⁶⁹ *Id.*

⁷⁰ 13 C.F.R. § 121.201, NAICS code 517211.

⁷¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

⁷² *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁷³ *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295, 62 FR 16004 (Apr. 3, 1997).

⁷⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (SBA Dec. 2, 1998 Letter).

Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.⁷⁶ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 365 carriers reported that they were engaged in the provision of paging and messaging services.⁷⁷ Of those, we estimate that 360 are small, under the SBA-approved small business size standard.⁷⁸

24. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction.⁷⁹ A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.⁸⁰ The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

25. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.⁸¹ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁸² According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.⁸³ We have estimated that 221 of these are small under the SBA small business size standard.

26. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.⁸⁴ We will use SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.⁸⁵ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

27. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.⁸⁶ Most applicants for

⁷⁵ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

⁷⁶ *Id.* at 10085, para. 98.

⁷⁷ FCC Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3., page 5-5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

⁷⁸ *Id.*

⁷⁹ Public Notice, “Auction of Wireless Communications Services, Auction Notes and Filing Requirements for 128 WCS Licenses Scheduled for April 15, 1997,” DA 97-386, Feb. 21, 1997.

⁸⁰ SBA Dec. 2, 1998 Letter.

⁸¹ 13 C.F.R. § 121.201, NAICS code 517212.

⁸² *Id.*

⁸³ FCC Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, page 5-5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

⁸⁴ The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

⁸⁵ 13 C.F.R. § 121.201, NAICS codes 517212.

⁸⁶ 13 C.F.R. § 121.201, NAICS code 517212.

recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.⁸⁷ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

28. Fixed Microwave Services. Fixed microwave services include common carrier,⁸⁸ private operational-fixed,⁸⁹ and broadcast auxiliary radio services.⁹⁰ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.⁹¹ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

29. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.⁹² There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for “Cellular and Other Wireless Telecommunications” services.⁹³ Under that SBA small

⁸⁷ *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

⁸⁸ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission’s Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

⁸⁹ Persons eligible under parts 80 and 90 of the Commission’s Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

⁹⁰ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

⁹¹ 13 C.F.R. § 121.201, NAICS code 517212.

⁹² This service is governed by Subpart I of Part 22 of the Commission’s rules. See 47 C.F.R. §§ 22.1001-22.1037.

⁹³ 13 C.F.R. § 121.201, NAICS code 517212.

business size standard, a business is small if it has 1,500 or fewer employees.⁹⁴

30. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁹⁵ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁹⁶ The SBA has approved these small business size standards.⁹⁷ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

31. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service comprises Multichannel Multipoint Distribution Service (MMDS) systems and Multipoint Distribution Service (MDS).⁹⁸ MMDS systems, often referred to as “wireless cable,” transmit video programming to subscribers using the microwave frequencies of MDS and Educational Broadband Service (formerly known as Instructional Television Fixed Service).⁹⁹ Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”),¹⁰⁰ and the Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”),¹⁰¹ to transmit video programming and provide broadband services to residential subscribers.¹⁰² These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.¹⁰³ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹⁰⁴ As described below, the SBA small

⁹⁴ *Id.*

⁹⁵ *See Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, Report and Order, 63 Fed. Reg. 6079 (Feb. 6, 1998).

⁹⁶ *Id.*

⁹⁷ *See* Letter to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

⁹⁸ *Amendment of Parts 1, 21, 73, 74, and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, RM-10586, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004).

⁹⁹ *See id.*

¹⁰⁰ MDS, also known as Multichannel Multipoint Distribution Service (“MMDS”), is regulated by Part 21 of the Commission’s rules; *see* 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); *see* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission’s Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) (“*MDS/ITFS Order*”).

¹⁰¹ ITFS systems are regulated by Part 74 of the Commission’s rules; *see* 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); *see MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

¹⁰² *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565 ¶ 131 (2006) (“*2006 Cable Competition Report*”).

¹⁰³ *Id.*

¹⁰⁴ *See* Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997).

business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.¹⁰⁵ Other standards also apply, as described.

32. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,¹⁰⁶ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.¹⁰⁷ This definition of a small entity in the context of MDS auctions has been approved by the SBA.¹⁰⁸ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.¹⁰⁹ MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

33. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).¹¹⁰ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

34. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹¹¹ The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹¹² An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹¹³ The SBA has approved these small business size standards in the context of LMDS auctions.¹¹⁴ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161

¹⁰⁵ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁰⁶ MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

¹⁰⁷ 47 C.F.R. § 21.961(b)(1).

¹⁰⁸ See *ITFS Order*, 10 FCC Rcd at 9589.

¹⁰⁹ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

¹¹⁰ In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

¹¹¹ See *Local Multipoint Distribution Service*, Second Report and Order, 12 FCC Rcd 12545 (1997).

¹¹² *Id.*

¹¹³ See *id.*

¹¹⁴ See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

licenses; there were 40 winning bidders.

35. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹¹⁵ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹¹⁶ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹¹⁷ Currently, no second auction is scheduled.

36. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.¹¹⁸ We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹¹⁹ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

37. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.¹²⁰ “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹²¹ The SBA has approved these small business size standards.¹²² These size standards will apply to the future auction, if held.

38. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to

¹¹⁵ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 59 Fed. Reg. 24947 (May 13, 1994).

¹¹⁶ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 64 Fed. Reg. 59656 (Nov. 3, 1999).

¹¹⁷ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 64 Fed. Reg. 59656 (Nov. 3, 1999).

¹¹⁸ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

¹¹⁹ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

¹²⁰ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, 16967 (2000); see also 47 C.F.R. § 101.538(a)(2).

¹²¹ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, 16967 (2000); see also 47 C.F.R. § 101.538(a)(1).

¹²² See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

Internet connectivity.”¹²³ Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.¹²⁴ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.¹²⁵ Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

39. *Part 15 Device Manufacturers.* The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”¹²⁶ The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.¹²⁷ According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.¹²⁸ Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.¹²⁹ Thus, under this size standard, the majority of firms can be considered small.

40. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.”¹³⁰ The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.¹³¹ According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for

¹²³ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹²⁴ 13 C.F.R. § 121.201, NAICS code 518111.

¹²⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

¹²⁶ U.S. Census Bureau, 2002 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

¹²⁷ 13 C.F.R. § 121.201, NAICS code 334220.

¹²⁸ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

¹²⁹ *Id.* An additional 18 establishments had employment of 1,000 or more.

¹³⁰ U.S. Census Bureau, 2002 NAICS Definitions, “334210 Telephone Apparatus Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

¹³¹ 13 C.F.R. § 121.201, NAICS code 334210.

the entire year.¹³² Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499.¹³³ Thus, under this size standard, the majority of firms can be considered small.

41. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).”¹³⁴ The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.¹³⁵ According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.¹³⁶ Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.¹³⁷ Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

42. Should the Commission decide to extend the automatic roaming requirement to non-interconnected services or features, including services that have been classified as information services, such as broadband Internet access service, or other non-CMRS services, the only reporting or recordkeeping costs incurred will be administrative costs to ensure that an entity’s practices are in compliance with the automatic rule. The compliance requirement is that carriers must provide automatic roaming to any requesting technologically compatible carrier outside of the requesting carrier’s home market on reasonable and non-discriminatory terms and conditions.¹³⁸ We seek comment on the possible burden such requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burden on small entities might be appropriate. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any compliance requirement that may result from this proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

¹³² U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 450.

¹³³ *Id.* An additional 4 establishments had employment of 2,500 or more.

¹³⁴ U.S. Census Bureau, 2002 NAICS Definitions, “334290 Other Communications Equipment Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

¹³⁵ 13 C.F.R. § 121.201, NAICS code 334290.

¹³⁶ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471.

¹³⁷ *Id.* An additional 3 establishments had employment of 1,000 or more.

¹³⁸ See *Further Notice of Proposed Rulemaking*, § 78.

43. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹³⁹

44. The Commission's primary objective in this proceeding is to facilitate seamless wireless communications for consumers, even when they are outside of the coverage area of their own service providers. The *Further Notice* seeks to build on the decisions made in the *Report and Order*. In the *Report and Order*, the Commission clarifies that the automatic roaming is a common carrier obligation and adopts an automatic roaming rule that is applicable to services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network, and to push-to-talk and text messaging service.¹⁴⁰ Recognizing wireless subscribers' increasing reliance on mobile telephony services, especially the growing demand of data services by consumers, the *Further Notice* seeks comment on whether the Commission should extend the applicability of the automatic roaming requirements to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services.

45. To the extent that addressing the issue raised in the *Further Notice* requires modifying the applicability of the automatic roaming rules, we seek comment on the effect that such rule changes will have on small entities, on whether alternative rules should be adopted for small entities in particular, and on what effect such alternative rules would have on those entities. We invite comment on ways in which the Commission can achieve its goals while at the same time impose minimal burdens on small wireless service providers. Below, we summarize the issues raised in the *Further Notice*.

46. *Mobile Data Service Roaming.* The item seeks comment on whether the Commission should extend whether we should extend automatic roaming obligations to non-interconnected services and features, including information services. To the extent that a covered carrier might be a small entity, we believe that extending the scope of automatic roaming obligation would be a benefit rather than a burden.

47. *Technical Issues.* The item also seeks comment on whether there are any special technical issues (or otherwise) associated with roaming among data networks that may not exist when roaming among CMRS carriers' interconnected voice networks. In the *Further Notice*, the Commission noted that it would be concerned if requiring a carrier to offer roaming service on its data network to the customers of other carriers resulted in the carrier facing capacity constraints that adversely affect its own customers. The *Further Notice*, therefore, asks whether a carrier should have the right to limit access to its network by roamers, and what parameters should be considered as justification for such limits.

48. *Jurisdiction over Information Service.* In the *Wireless Broadband Classification Order*,¹⁴¹ the Commission determined that mobile wireless broadband Internet access service is an information service, and that it is not CMRS. If the Commission were to impose an automatic roaming on mobile wireless broadband Internet access service as proposed in the *Further Notice*, the jurisdictional issue should be considered regarding how could we treat the information service for roaming purpose. For example, could the Commission base the requirement on Title I ancillary jurisdiction, or on the Title

¹³⁹ See 5 U.S.C. § 603(c).

¹⁴⁰ See *supra* ¶¶ 2, 65-67.

¹⁴¹ See generally, Wireless Broadband Internet Access Declaratory Ruling, 22 FCC Rcd 5901.

III regulation of radio services? Alternatively, the *Further Notice* seeks comment on whether the Commission should restrict the automatic roaming mandate only to non-interconnected data services that are not classified as information services.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

49. None.

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143

Consumers increasingly expect that their mobile phones will function where they work, where they play, and where they travel. Automatic roaming fulfills these expectations in a manner that is seamless and transparent to the consumer. Today's Report and Order will help ensure that all consumers including those living in rural areas receive this benefit.

The order adopted today, however, also recognizes that a reasonable roaming request does not include a request for roaming in areas where a provider already has access to spectrum. In this respect the Report and Order continues to support the overarching goal of encouraging facilities-based competition in the wireless market. It also does not impose a price cap or any other form of rate regulation.

While the Report and Order adopted today does not impose automatic roaming obligations on carriers' broadband data services, the Further Notice adopted today seeks additional comment on automatic roaming for broadband data. I am sympathetic to some of the concerns raised regarding access to data roaming. Some companies, however, have also suggested that part of their business model for the 700 MHz band includes wholesaling capacity to provide broadband roaming to other carriers as a kind of anchor service. I am concerned that extending the roaming obligation to broadband data services at this time could undermine the wholesale model that some have advocated.

I look forward to the further development of the record on these issues, and to working with my colleagues to address the questions raised.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, CONCURRING IN PART**

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143

Today's item is good news for consumers who want to be able to use their mobile phones as they travel across the United States. On three occasions over the past three decades, the FCC has declined to create an automatic roaming rule. The upshot is that—until today—small, rural wireless carriers have not enjoyed the common carrier protections of Title II when negotiating roaming agreements with other carriers, including large national ones. This is an important dollars and cents issue for consumers. After all, it is consumers who pay the price at the end of the day when their carriers accept inflated roaming rates or cannot reach a roaming agreement at all.

Today's decision affirms for the first time that carriers must deal with each other in good faith and without discrimination when it comes to negotiating roaming for voice service. We also include push-to-talk and text messaging, as well as data services that interconnect with the PSTN. This means Americans will be able to travel with greater confidence that they can place and receive calls while on the road. I appreciate the Chairman's leadership in bringing this pro-consumer item to us.

I concur in part, however, because I believe we should have taken another step forward today. Consumers rely upon their mobile handsets these days for a dizzying array of data services, going well beyond those we cover in today's item. Because the Commission chose—unwisely, in my view—to reclassify data services under Title I rather than Title II of the Communications Act, these services are for the most part *not* included in the protections created by today's Order.

Consider some of the immediate effects of our decision today:

- Roaming consumers will be able to send text messages to their friends' mobile phones—because we conclude today that text messaging is “typically offered” in conjunction with voice service. But these very same consumers have no guarantee that they can send emails to their friends—even though many consumers (including virtually all of us in this room) routinely use mobile devices to send and receive email.
- Roaming consumers will be able to make voice calls to PSTN numbers in the ordinary fashion. But it is not clear that they can rely on a VoIP application they may have downloaded to call PSTN numbers; and they have no guarantee whatsoever of being able to use a peer-to-peer VoIP product that dials IP addresses rather than PSTN numbers.

- Consumers who access the Internet by using their mobile device as a dial-up modem will be able to do so while roaming.¹⁴² But consumers have no guarantee of being able to access the faster speeds offered by *non*-dial-up forms of wireless Internet access. And they have no guarantee of being able to use the many applications on their devices that rely on Internet access, such as browsers, mapping programs, interactive games, and so forth.

These are precisely the type of confusing, consumer-unfriendly results that led me to object to the Commission's reclassification of data services under Title I in the first place. Remember when we used to treat telephones as telephones and the telecommunications that enabled them as telecommunications services? That made for a lot less consumer confusion. Consumers should not have to be amateur engineers or telecom lawyers to figure out which mobile services they can expect to work when they travel. They should be able to assume that their phones will work to the fullest extent that technology permits, wherever they happen to be. And carriers should have the right to negotiate roaming agreements that secure just and reasonable prices for their own consumers.

I do appreciate my colleagues' willingness to address the issue of data roaming in a Further Notice of Proposed Rulemaking. I happen to think that the record we have before us right now is more than sufficient to support imposing an automatic data roaming rule today. Doing that would have provided some much-needed certainty to consumers and businesses alike, channeling technology development in a consumer-friendly way. But I do look forward to considering this issue in the weeks and months ahead, and I hope that we can reach a consensus that consumers should have the same roaming expectations in the future when it comes to data services that they have for voice services starting today.

Finally, my thanks to the Bureau which I know put a lot of hard work into this proceeding.

¹⁴² See, e.g., J.D. Biersdorfer, "Dial Up the Web with a Cellphone," *New York Times* (July 12, 2007).

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, CONCURRING IN PART**

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143

I am thrilled that we are at last tackling the long-simmering issue of roaming. While we do not resolve all of the key issues here today, particularly broadband roaming, this is a major step forward on an issue I have long believed deserves our attention. I have spoken often about my concern with the competitiveness of the commercial mobile radio service (CMRS) wholesale market and the Commission's need to reexamine our roaming obligations. So I am particularly pleased that after many fits and starts over the past several years, we finally are putting in place specific automatic roaming obligations on CMRS providers.

While some will say that this was a dispute between large and small carriers, I see this simply as a win for consumers. Our automatic roaming obligation will help all consumers have access to better coverage and service availability no matter where they live and where they travel. No customer should have to see the words "No Service" on their wireless device when there is a compatible network available.

Many argue that given the competitiveness of the CMRS retail marketplace, there is no need for Commission intervention. There are two flaws in that reasoning.

First, especially in light of the continuing consolidation in the market, just because a market is competitive doesn't mean we shouldn't take steps to ensure it remains that way. Nothing is more fundamental than interconnection to our mission, and roaming is in many ways how the wireless world interconnects.

Second, I have been increasingly concerned about the competitiveness of the CMRS wholesale market as compared to five years ago. Concerns about roaming have become more widespread and more vocal over the past several years. Whether in the context of recent mergers or other rulemakings, the Commission is hearing regularly from small and mid-size carriers who are becoming increasingly frustrated with their ability to negotiate automatic roaming agreements with larger regional and nationwide carriers for the full range of CMRS services. Not surprisingly, consolidation in the wireless industry over the past few years has only served to amplify existing concerns about the current state of roaming practices.

A critical distinction between the wholesale and retail market is that the network technology of a carrier interested in roaming even further limits the choice of potential roaming partners in a given market. For example, it is difficult for a carrier who employs GSM technology to roam on a CDMA network. It is like a vegetarian dining at a restaurant with four options on the menu, but only having the choice of the one that does not have meat. Just because

there are four or five wireless options for consumers doesn't mean that carriers have that many choices about with whom they can choose to roam.

But while we place an important piece in clarifying that automatic roaming is subject to the common carrier provisions of Title II of the Act, including Sections 201 and 202, I remain concerned that we have not finished the puzzle by extending our automatic roaming requirement to all data services. Unfortunately, our rushed effort to reclassify broadband services as Title I services has taken the Commission outside the ambit of the core legal protections and grounding afforded by Congress in Title II. While our proceeding should be an "automatic" opportunity to include broadband services under our roaming approach, we are now presented with some unnecessarily challenging questions to our new and unsettled legal and policy framework for broadband services.

As I warned earlier this year in our wireless broadband reclassification item, we must be careful in drawing an unnecessarily bright line between wireless broadband services and commercial mobile services and the regulatory protections that come with CMRS status. Indeed, our own item goes to great length to limit automatic roaming to services that are interconnected to the public-switched telephone network, but then turns around and (rightly) includes non-interconnected text messaging and push-to-talk services in the automatic roaming services.

Rather than look for ways to narrow the automatic roaming obligation, the public interest would be much better served if we were to consider how best to frame the roaming requirement to include broadband. With the stroke of a pen, the Commission could have taken the specific step of enhancing the experience of consumers who are interested in having access to high-speed wireless services wherever they travel. As we become an increasingly mobile and broadband society, we are missing a real opportunity to improve broadband availability for American consumers through an automatic data roaming obligation.

I am very pleased, however, of the willingness of Chairman Martin and my colleagues to include a Further Notice of Proposed Rulemaking on the issue of extending this roaming obligation to other non-interconnected services or features, including information services. It is critical that we address this issue in the near term. Consumers place great value on their ability to seamlessly access their wireless broadband services and it is our job here at the Commission to step in and ensure that consumers have access to both voice and data when they leave their home service area.

For all of these reasons, while I strongly support our decision to adopt a specific rule to ensure the continued development of automatic roaming services, I approve in part and concur in part to this Report and Order.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143

As a state commissioner, I often heard from small and rural providers about the problems they faced regarding roaming. I believe it is important for subscribers across the country, including those who live in rural areas, to have access to a robust communications network. In roaming, as with other rules, we can and should support small and rural providers and their customers in obtaining this access via wireless services. For example, just last week, we approved new rules for the 700 MHz Band that will make more spectrum available across small license areas for small and rural providers and encourage deployment of wireless service in rural areas.

Today's order recognizes that small and rural providers nonetheless find it hard to do business if their subscribers cannot be connected to larger, even nationwide, networks. The customers of these providers understandably want service when they travel outside of their provider's home network for school, work, or to access healthcare. There also may be benefits to public safety, or even homeland security, in having mobile subscribers connected at all times, even while they are outside their home networks. In addition, subscribers want roaming to work seamlessly, with what is called "automatic" roaming.

It is also worth noting that roaming is an important issue for carriers of all sizes and consumers in all places. For example, some providers have invested to build networks over large geographic areas, including building nationwide services. These large carriers want to receive reasonable compensation for the use of their networks, so they may continue to invest, maintain and upgrade their facilities to serve their subscribers, as well as other carriers' subscribers.

Today's item tries to strike a balance by clarifying that automatic roaming is a common carrier service and thus subject to protections outlined in Sections 201 and 202 of the Communications Act. I am reluctant to interfere with competitive market forces, and I am pleased that we decline to impose rate regulation on roaming fees. Small and rural carriers can be assured that, upon a reasonable request, other CMRS carriers will be required to provide them with automatic roaming services on a "just, reasonable, and non-discriminatory basis." Carriers that are likely to provide automatic roaming can be assured that the Commission will not be parsing the details of every roaming agreement.

Our rules also should encourage efficiency. Where providers have spectrum or access to it, they should build out their networks. Where they do not, we want to ensure that customers of these providers can roam on other networks. Today's item strikes the right balance by not establishing roaming as an obligation of a would-be provider for any market in which the requesting carrier already owns or leases spectrum usage rights.

Today's item also issues a Further Notice seeking comment on whether we should extend the automatic roaming obligation that we adopt today to non-interconnected services or features, including services such as wireless broadband Internet access. I hope that, in taking this step, we are not revisiting the issues we addressed only 138 days ago in the *Wireless Broadband Classification Order*, which found that wireless broadband Internet access is an information service.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143

I support today's narrowly-tailored action to codify wireless carrier obligations regarding automatic roaming. Today we are acting consistently with the Commission's general policy to allow competitive market forces, rather than regulations, to foster the development of wireless services, subject to the protections of Sections 201 and 202 of the Communications Act. For example, we are refraining from: imposing negotiation mandates; setting rates; creating a new class of wireless carriers; and initiating an investigation of roaming practices. Our light regulatory approach will benefit wireless consumers because we are allowing the industry to fulfill consumer expectations of anytime, anywhere communications through seamless roaming arrangements.

Given that the market for non-interconnected services provided over advanced broadband networks is still developing, it is appropriate that we are seeking additional comment on the implications of extending the automatic roaming requirement to these services. Although it is possible that unrestricted data roaming obligations may benefit consumers by providing a wider availability for the data features they increasingly rely upon, it is equally important that the Commission not inhibit innovation and investment by distorting incentives to differentiate products. I recognize and appreciate the complicated legal and economic factors involved, and I look forward to hearing from interested stakeholders on this aspect of the market. In the meantime, I strongly urge the private sector to work together to forge solutions for the benefit of all wireless consumers.

Thank you to the staff of the Wireless Bureau, my colleagues, and especially Chairman Martin.

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

In the Matter of)
)
 Interconnection and Resale Obligations)
 Pertaining to) CC Docket No. 94-54
 Commercial Mobile Radio Services)

SECOND REPORT AND ORDER
 AND THIRD NOTICE OF PROPOSED RULEMAKING

Adopted: June 27, 1996; Released: August 13, 1996

Comment Date: October 4, 1996
 Reply Date: November 22, 1996

By the Commission: Commissioner Chong issuing a statement.

TABLE OF CONTENTS

	Paragraph
I. INTRODUCTION AND EXECUTIVE SUMMARY.1
II. ROAMING3
A. Introduction3
1. Regulatory Background3
2. Technical Background5
B. Comments8
C. Decision	10
III. FURTHER NOTICE OF PROPOSED RULEMAKING	15
A. Carrier-to-Carrier Roaming	15
B. Sunset	31
C. Other Issues	33
IV. CONCLUSION	36
V. PROCEDURAL MATTERS	37
A. Filing Procedures	37
B. Regulatory Flexibility Act	40
C. Authority	41
D. Further Information	42
VI. ORDERING CLAUSES	43
Appendix A: Parties Filing Comments and Reply Comments	
Appendix B: Final Regulatory Flexibility Analysis	

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. This Order continues our examination of issues concerning the offering of roaming services by commercial mobile radio service (CMRS) providers. We initiated this proceeding in a Notice of Proposed Rulemaking and Notice of Inquiry that addressed a broad array of CMRS regulatory issues, including roaming. Subsequently, we refined our proposals concerning roaming in a second Notice of Proposed Rulemaking. Our actions in this Order are taken to further the goals and requirements of the Communications Act of 1934, as amended, including the charge recently given to us by Congress to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

2. Our principal decisions, based on the record compiled in response to the Second NPRM, are as follows. First, we conclude that the availability of roaming on broadband wireless networks is important to the development of nationwide, ubiquitous, and competitive wireless voice telecommunications, and that, during the period in which broadband personal communications services (PCS) systems are being built, market forces alone may not be sufficient to cause roaming to become widely available. Therefore, we expand the scope of our existing "manual" roaming rule, which requires cellular carriers to serve individual roamers, see 47 C.F.R. § 22.901, to include other CMRS providers that offer comparable competitive mobile telephony services. As a result of this action, cellular, broadband PCS, and certain specialized mobile radio (hereinafter "covered SMR") carriers must, as a condition of their licenses, provide service to any individual roamer whose handset is technically capable of accessing their network. Second, we seek comment on whether we should define cellular, broadband PCS and covered SMR providers' obligations to include the provision of "automatic" roaming service to other carriers (i.e., carrier-to-carrier roaming service). Since market forces should eliminate the need for any explicit roaming regulations once broadband PCS licensees have built out their networks, our consideration of automatic roaming issues is grounded in a belief that any action we might take would sunset five years after the last group of initial licenses for currently allotted broadband PCS spectrum is awarded. In addition, we seek comment on whether our manual roaming rule should be subject to a similar sunset.

II. ROAMING

A. Introduction

1. Regulatory Background

3. "Roaming" occurs when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider with which the subscriber has no direct pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call. Typically, although not always, roaming occurs when the subscriber is physically located outside the service area of the provider to which he or she subscribes. Under Section 22.901 of our rules, cellular system licensees "must provide cellular mobile radiotelephone service upon

request to all cellular subscribers in good standing, including roamers, while such subscribers are located within any portion of the authorized cellular geographic service area . . . where facilities have been constructed and service to subscribers has commenced."

4. In the NOI, we requested comment regarding whether the obligation to permit roaming should be extended to all CMRS, what regulatory standards are appropriate to promote roaming, and what technical issues or requirements are implicated. In the Second NPRM, we tentatively concluded that roaming service is important to the development of a seamless CMRS "network of networks." We also tentatively concluded, based on the available evidence, that uncertainties concerning the technological development of non-cellular CMRS and the likelihood that market forces would adequately promote the availability of roaming counseled regulatory caution. Therefore, we proposed, in lieu of a rule, to monitor the development of roaming service and to intercede as appropriate. In addition, we requested comment on several other issues related to roaming, including the technical feasibility of cross-service roaming, the necessity of direct physical interconnection to facilitate roaming, the necessity of access to subscriber databases and any privacy or proprietary issues raised, and the technical and contractual arrangements that are currently used to provide roaming in the cellular service.

2. Technical Background

5. Roaming service can be provided through a variety of technical and contractual arrangements. The most rudimentary form of roaming is manual roaming. Manual roaming is the only form of roaming that is available when there is no pre-existing contractual relationship between a subscriber, or her home system, and the system on which she wants to roam. In order to make or receive a call, a manual roamer must establish such a relationship. Typically, the roamer accomplishes this in the course of attempting to originate a call by giving a valid credit card number to the carrier providing service.

6. Automatic roaming means that the roaming subscriber is able to originate or terminate a call without taking any action other than turning on her telephone. This form of roaming requires a contractual agreement between the home and roamed-on ("host") systems. Before a subscriber can complete an originating call under an automatic roaming arrangement, the host system first identifies the subscriber's home carrier by means of the subscriber's telephone number, verifies that it has an agreement with that carrier, and queries the carrier to verify that the subscriber's account is current (and in some instances to obtain other information about the subscriber, such as her preferred service features). To provide automatic terminating service, the host system typically sends a signal to the home carrier as soon as the subscriber enters its service area with the phone turned on so that the home system will know where to direct calls. Although many roaming agreements between carriers allow for automatic originating and terminating access, others involve a form of manual terminating service whereby the subscriber must make an affirmative act to register with the host system, such as punching in a code, before she can receive calls.

7. The basic technical requirement for either manual or automatic roaming is that the subscriber have a handset technically capable of accessing the host system. Unless subscribers are willing to carry two telephones, therefore, roaming between cellular and other CMRS

services will require subscribers to use handsets that are dual band, and perhaps dual mode as well. Furthermore, in order for the switches of systems using different technologies to communicate most efficiently when providing automatic roaming, new protocol conversion standards may in some instances need to be devised. Neither originating nor terminating roaming requires direct interconnection of carriers' switches. Interconnection does appear to be necessary, however, if carriers desire to allow their customers to continue calls in progress when they enter another carrier's service area. Such interconnection may be technically and administratively complex.

B. Comments

8. Commenters generally agree with our tentative conclusion in the Second NPRM that ubiquitous roaming on cellular and broadband PCS systems is important to the development of a seamless, nationwide "network of networks." Commenters differ, however, over whether regulation is necessary or appropriate to promote the availability of roaming. Some commenters argue that regulation is unnecessary because CMRS providers have a strong economic incentive to enter into reciprocal roaming agreements, both so that they can offer roaming to their own subscribers and to realize revenues from roamers in their service areas. Providers will have no anticompetitive incentive to deny roaming agreements, they contend, because providers operating in different service areas do not directly compete with each other. Furthermore, they state, cellular providers affiliated with PCS licensees will not deny roaming opportunities to other PCS providers because such cellular providers will want to preserve roaming capability for their own customers. Even if some cellular providers do limit roaming, these commenters claim, PCS providers will have ample incentive to offer agreements to each other. Several commenters also argue that roaming arrangements occurred in the cellular service without substantial regulatory intervention. Thus, these commenters conclude, competition in the CMRS market will ensure that automatic roaming becomes available wherever there is sufficient consumer demand to justify its provision. In addition, some commenters argue, roaming regulation could exact significant network-related costs, especially for smaller CMRS providers, because: (1) roaming arrangements may be technically infeasible or unreasonably costly under some circumstances, and (2) a roaming requirement might obstruct or discourage buildout of networks and technical innovation.

9. Other commenters argue that market forces alone will not ensure the widespread availability of roaming arrangements, and that roaming regulation is necessary to ensure the establishment of effective competition between incumbent cellular providers and new PCS and covered SMR competitors. These commenters contend that new CMRS entrants will need to offer automatic roaming in order to make their services attractive to consumers. For example, Comcast states that cellular carriers often have not offered each other nondiscriminatory roaming agreements, but rather have unreasonably favored their own affiliates. Furthermore, they argue, there exists today a far stronger anticompetitive incentive for established carriers to deny roaming capability to new entrants than existed during the development of cellular service because the established carriers already have widespread roaming capability, which they can claim as a distinguishing feature of their service. In order to promote competition, commenters support the idea of prohibiting CMRS providers from discriminating with respect to the availability or terms of roaming agreements. Commenters further state that we should not mandate particular

technology or standards, and that the burden of developing and implementing any technology necessary to permit roaming should lie with the party seeking a roaming agreement.

C. Decision

10. At the outset, we note that Sections 201(b) and 202(a) of the Communications Act apply to CMRS providers and govern the provision of common carrier communications services. We reject BellSouth's argument that roaming is merely a billing arrangement and not a common carrier service. We have held that certain billing and collection services offered by local exchange carriers (LECs) to interexchange carriers (IXCs) are not common carriage because such services do "not allow customers of the service . . . to communicate or transmit intelligence of their own design and choosing," and because such services can be offered by non-communications entities such as credit card companies. Roaming capability, by contrast, gives end users access to a foreign network in order to communicate messages of their own choosing. We therefore agree with those commenters that argue that roaming is a common carrier service. We also note that we have authority to impose a roaming requirement in the public interest pursuant to our license conditioning authority under Sections 303(r) and 309 of the Act. 11. The record submitted in response to the Second NPRM demonstrates that roaming capability is widely available to cellular subscribers, is highly valued by those subscribers, and is one of the industry's fastest growing sources of revenue. For example, roaming income accounted for 13.6 percent of cellular industry revenues during the last six months of 1994 and was growing at 42 percent per year, despite the fact that many carriers charged premium prices to roamers. Furthermore, when APC in the Washington/Baltimore area became the first licensee in the nation to offer broadband PCS service, its largest cellular competitor concentrated its advertising campaign on the unavailability of roaming to APC's customers. Such activity indicates that roaming capability may be a key competitive consideration in the wireless marketplace, and that newer entrants may be at a competitive disadvantage vis-a-vis incumbent wireless carriers if their subscribers have no ability to roam on other networks. Having said that, we recognize that roaming regulation may impose significant costs and burdens on CMRS providers and that we should narrowly tailor our actions to avoid placing an undue burden on such providers.

12. Based on comments in the record and the experience of the first broadband PCS licensee to begin service, we conclude that the public interest will be served by extending our existing manual roaming rule, which is part of our cellular service rules, to obligate all CMRS licensees competing in the mass market for real-time, two-way voice services and to protect the subscribers of all carriers offering such services. That group consists of cellular, broadband PCS and covered SMR providers. These "covered SMR providers" include two classes of SMR licensees. The first consists of 800 MHz and 900 MHz SMR licensees that hold geographic area licenses. The second covers incumbent wide area SMR licensees, defined as licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR service, either by waiver or under Section 90.629 of our rules. Within each of these classes, "covered SMR providers" includes only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services. This is the same group of SMR licensees to which we have applied our recently adopted rule governing restrictions on resale.

13. Under the rule that we adopt today, cellular, broadband PCS, and covered SMR licensees are required to provide manual roaming to any subscriber of any of these services who is using a handset that is technically capable of accessing the licensee's system. The rule does not require licensees to modify their systems in order to provide service to any end user. Some commenters argue that amending the existing rule in this manner is unnecessary because cellular systems cannot distinguish between a cellular subscriber using a cellular-only handset and a PCS subscriber using a dual-mode handset, and therefore the existing rule effectively protects PCS as well as cellular roamers. As other commenters observe, however, the current rule on its face extends only to cellular subscribers. To avoid any uncertainty, our action today clarifies that any subscriber to any covered service with a technically cellular-compatible handset has the same right as a cellular subscriber to manually roam on cellular systems. Furthermore, our existing rule does not obligate broadband PCS and covered SMR licensees. We are applying the manual roaming rule to these categories of CMRS licensees in order to ensure regulatory parity and to promote competition in the wireless market by enhancing all such carriers' abilities to compete. Since our action today furthers the public interest by facilitating the widespread availability of roaming, we make compliance with the rule we adopt today a condition of cellular, broadband PCS and covered SMR licenses under Sections 303(r) and 309 of the Act.

14. By contrast, the record does not establish that ubiquitous roaming capability is important to the competitive success or utility of mobile services other than those offered by cellular, broadband PCS and covered SMR providers. We therefore conclude that our action today shall be limited to such licensees. In particular, because they do not compete substantially with cellular and broadband PCS providers, local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, as well as licensees offering only data, one-way, or stored voice services on an interconnected basis, are not covered by the roaming rule we adopt today. We believe that the costs of applying the roaming rule to their operations would outweigh the benefits. Not the least of these costs is that applying the policy might give them an incentive to eliminate their interconnection with the public switched network, which would not be in the public interest. Of course, any SMR provider that is not interconnected to the public switched network does not offer CMRS, and therefore is not subject to the roaming rule. Allegations that particular practices by non-covered CMRS providers are unjust, unreasonable or otherwise in violation of the Communications Act would be grounds for complaint under Section 208 of that Act.

III. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Carrier-to-Carrier Roaming

15. Our previous notice of proposed rulemaking concerning roaming was released more than one year ago. At that point, our initial broadband PCS auctions had just been conducted and licenses were not yet issued. The business plans of companies entering the market for broadband PCS services were in their formative stages. No dual band or dual mode phones were yet available, and no broadband PCS provider had experience trying to negotiate a roaming agreement. The comments we received largely reflected the nascent nature of the market's development. Most commenters supported our tentative decision to leave roaming to market forces while monitoring its progress. Relatively few commenters (mostly new entrants)

advocated the need for regulation that would promote automatic roaming. Since the record predated the operation of nearly all broadband PCS systems, it could not demonstrate the failure of the market to ensure the widespread availability of automatic roaming arrangements. Overall, the record yielded by the initial comments was inconclusive. In the interim, market activity has accelerated. Several broadband PCS systems are now operational, and others are expected to become so in short order. Dual mode phones will be available in a few months. The technical standards necessary to render cellular and certain PCS network technologies interoperable for automatic roaming purposes appear to have been developed. We understand that roaming negotiations between PCS and cellular carriers have begun in some markets.

16. The inconclusiveness of the original record does not present a basis for us to adopt automatic roaming rules. The record does persuade us, however, of the need to seek up-to-date information on events of the past year concerning automatic roaming issues. Evidence indicates that the views of interested parties on automatic roaming issues have evolved significantly since our last action on such issues. Entities that have obtained broadband PCS licenses or recently submitted winning bids in broadband PCS auctions have urged us to examine automatic roaming issues more thoroughly. Another, more established, entity in the wireless marketplace recently made a detailed presentation of its view that Commission action on automatic roaming would be premature and could harm the development of wireless services. There also appears to have been a significant shifting of positions by some commenters. In general, the record raises the question whether, during the broadband PCS buildout period, market conditions may create economic incentives for certain CMRS carriers to discriminate unreasonably in the provision of roaming, or to otherwise engage in unjust or unreasonable practices with regard to roaming.

17. Some commenters contend that the need to jump start competition by emerging wireless providers, especially PCS providers, is too great to rely on clarification of statutory obligations in after-the-fact adjudicatory proceedings, such as complaint proceedings under Section 208 of the Act. Such commenters are arguing, essentially, that a proactive Commission posture toward roaming at this time, including defining in advance the obligations of licensees to provide automatic roaming, will promote competition and thereby eliminate the need for regulation in the long run. On the other hand, the record contains thoughtful arguments that the regulation of automatic roaming is unnecessary and may distort the development of wireless services. Given the importance that we attach to ensuring the widespread availability of roaming, and the inconclusiveness of the current record, we conclude that we should request additional comment on whether it would serve the public interest to adopt rules governing the provision of automatic roaming service by CMRS providers to other CMRS providers.

18. Our consideration of automatic roaming issues is framed by three general questions. First, is there a need for Commission action? Second, if we are persuaded that regulation would serve the public interest, what specific action should be taken? Third, what are the disadvantages of such action, especially as to network costs and additional burdens on providers, particularly smaller providers?

19. Some commenters indicate that new entrants may need access to originating and terminating roaming agreements in order to begin competing immediately and effectively with their relatively more established counterparts, and that market forces alone may not ensure that

such arrangements will be widely available in the near term. They claim that incumbent CMRS providers have the market power and the economic incentive to deny roaming agreements to new entrants. On the other hand, AT&T argues that this incentive exists only when both A and B Block cellular licensees in a market also hold cellular licenses in a PCS provider's home market, and that such dual overlap occurs only rarely. Carriers also argue that they have strong incentives to enter into roaming agreements to get revenues. We note as well that the geographic scope of broadband PCS licenses may reduce the importance of roaming to ensuring the ability of PCS providers to compete. Most roaming appears to occur in adjacent markets. The relatively limited geographic scope of cellular service areas prompted cellular carriers to compete for customers based on the extent of their roaming networks and their roaming rates and features. In contrast, broadband PCS license areas are significantly larger than cellular. Accordingly, broadband PCS customers can go much further distances without roaming. This raises the question of whether broadband PCS providers need to be able to offer automatic roaming arrangements in order to be able to compete. We seek comment on this issue.

20. We also seek comment on whether incumbent wireless providers have an incentive to, and will, deny roaming agreements to other providers. We note that there is no specific evidence in the record of unreasonable discrimination against PCS licensees concerning the provision of roaming. To the contrary, there is evidence that some PCS providers believe they will be able to negotiate roaming agreements successfully without an automatic roaming rule. However, it is still early in the process. Many PCS licensees are just starting to construct their systems. Dual-mode handsets are just becoming available. We seek evidence of the denial of agreements, or unreasonable discrimination in the provision of agreements, to the extent it exists. We also seek comment on the likelihood of discrimination among wireless carriers belonging to partnerships, joint ventures, and other alliances among cellular carriers. We seek comment on whether the geographic extent of a carrier's license holdings (in particular, carriers whose cellular and/or PCS holdings give them essentially nationwide, facilities-based operating "footprints") affects its incentive to enter into roaming agreements with smaller competitors in a way that merits a roaming requirement. We seek comment, too, on whether requiring carriers to enter into roaming agreements will affect the value of these carriers' nationwide footprints.

21. We seek comment on whether new entrants currently have viable options to obtain automatic roaming if incumbent cellular providers unreasonably deny such agreements. We note that although the deployment of multiple CMRS networks will, in the long run, increase the number of parties with which roaming agreements can be obtained in any area, such networks will not be widely available during the construction period of broadband PCS. We seek comment on the timing of such construction period. AT&T argues that, to the extent this is a problem at all, a PCS carrier can obtain roaming service during the buildout period in any market by entering into a contractual agreement with a cellular carrier that already possesses a roaming agreement in that market. Pacific responds that this approach may be administratively cumbersome, financially costly, and potentially inconsistent with the way roaming agreements are written. We seek comment on whether AT&T's proposal for new entrants to "piggyback" on existing roaming arrangements is a reasonable means for carriers to obtain roaming capability.

22. To the extent that a basis for Commission action on automatic roaming is established, we seek comment on what the nature of that action should be. For example, should we, as a

condition of license, require cellular, broadband PCS and covered SMR providers which enter into roaming agreements with other such providers to make like agreements available to similarly situated providers, where technically compatible handsets are being used, under nondiscriminatory rates, terms and conditions? Such a rule could prevent established carriers from entering into favorable roaming agreements only with selected providers and unreasonably denying such agreements to other similarly situated carriers. We clarify that such a rule would need to recognize that not all carriers are similarly situated. Thus, such a rule need not require carriers to offer roaming agreements to all other carriers on the same terms and conditions, or even to offer roaming service to any carrier at all. We seek comment on the question of whether a covered CMRS provider that enters into a roaming agreement with another CMRS provider, however, should be required to offer like roaming agreements to other similarly situated providers upon reasonable request, without unreasonably discriminating on rates, terms, and conditions. We seek information and comment on the cost and burden of such a requirement.

23. Sprint Venture argues that providers should be permitted to offer roaming agreements to affiliates on different terms and conditions than to non-affiliates, reasoning that a roaming arrangement with an affiliate may be part of a greater agreement that affords other benefits to the provider. Comcast, however, contends that major carriers' practice of offering discriminatorily favorable roaming rates to their affiliates has had a serious detrimental effect on the competitive position of carriers without extensive affiliations. We seek comment on whether a carrier should be able to offer a more favorable rate to its affiliates. Similarly, we seek comment on whether a carrier should be able to offer a lower rate to a geographically proximate carrier. We seek comment on whether, as a general matter, it would serve the public interest to require carriers to make roaming service available to other carriers pursuant to one-way agreements under the same terms and conditions as under reciprocal agreements. We seek comment on whether carriers should be permitted to refuse to enter into automatic roaming agreements with other facilities-based carriers in their markets. We seek comment on the advantages and disadvantages of a rule that would facilitate such "in-region" roaming. We seek comment on how in-region roaming may affect carriers' incentives to build out their networks. We also seek comment on how an exception that permits carriers to deny roaming agreements to in-region competitors could be administered, given the different geographic scope of cellular, broadband PCS and covered SMR licenses and operations.

24. Cellnet of Ohio claims that licensed, facilities-based carriers often discriminate against resellers with regard to the provision of roaming services, and typically will not enter into roaming agreements with resellers at all. Cellnet of Ohio argues that special rules are necessary to protect the right of resellers to enter into roaming agreements. We do not propose to regulate the prices that carriers may charge resellers (or anyone else) for roaming, other than perhaps to prohibit discrimination in the prices charged to similarly situated carriers. We seek comment, however, on the additional costs and burdens that may be imposed on facilities-based carriers if they are required to separately enter into agreements with multiple resellers. We also seek comment on what, if any, benefits might be generated by enabling resellers to obtain roaming agreements.

25. One of the principal reasons for our tentative conclusion in the Second NPRM to monitor the development of roaming, rather than to propose rules at that time, was our concern that

technical factors might render compliance with rules unduly costly for providers, or that our rules might inadvertently impede technological progress. Based on the comments that we received, we are not persuaded that a roaming rule would have such an effect unless it required direct interconnection of networks for the continuation of calls in progress. While handoff of calls in progress is available at this time in some cellular markets, it is much less widespread than originating and terminating access. More importantly, the record does not indicate that broadband PCS or cellular providers need to be able to obtain "continuation of calls in progress" roaming capability in order to compete. For these reasons, we do not propose to require continuation of calls in progress. We seek additional technical information on this subject, and request comment on our analysis.

26. We seek comment on whether and how rules governing automatic roaming could be at odds with our general policy of allowing market forces, rather than regulation, to shape the development of wireless technologies. Our goal would be to make any rule we adopt consistent with such a policy. For example, under such a rule, if systems used different technologies or operated on different frequencies, we believe the carrier seeking to enable its subscribers to roam on another system would have the burden of developing and implementing any technology necessary to achieve that result. Furthermore, on the basis of the existing record, we believe any automatic roaming rule should be sufficiently flexible to permit a carrier to change its technology for legitimate business reasons (e.g., increasing capacity, spectrum efficiency, fraud control or the deployment of enhanced features) without any obligation to make its system accessible to roamers using different technologies, to the extent such a technology change is otherwise permitted by our rules. A carrier could not, however, introduce features into its system in order to obstruct service to roamers from systems using otherwise compatible technologies. We seek comment on this analysis.

27. Requiring non-discrimination in roaming agreements would, theoretically, generate certain benefits. However, there also are potential downsides to imposing an automatic roaming requirement. First, imposing such a requirement is inconsistent with our general policy of allowing market forces, rather than regulation, to shape the development of wireless services. Similarly, it could be viewed as at odds with Congress' goal in adopting the Telecommunications Act of 1996 of creating a "pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry. Does the importance of roaming and the potential for discrimination warrant a departure from our general competitive, deregulatory approach to wireless?

28. Second, as discussed above, cellular carriers compete vigorously on the basis of their roaming services. If we adopt an automatic roaming non-discrimination requirement, will carriers still be able to differentiate their roaming services? If they cannot, will this lessen competition in the wireless market? Also, what impact will a roaming requirement have on the development of new and improved roaming features?

29. Third, the imposition of an automatic roaming requirement could be costly and burdensome. There are currently approximately 1,400 cellular systems; we anticipate that broadband PCS and covered SMR providers, once licensed, will expand that number appreciably. What network and administrative costs are associated with entering into and

maintaining roaming agreements among all such carriers? Will carriers, particularly smaller carriers, be able to absorb these costs or to recover them from their customers or other carriers? In this regard, we emphasize that we are not considering requiring carriers to upgrade their networks or implement any technology solely to enable roamers on different frequencies or with different air interface devices to complete calls on their systems. Similarly, we are not considering requiring carriers to interconnect their networks to ensure that calls in progress can continue.

30. Finally, some commenters argue that a roaming requirement would unduly expose CMRS providers to losses due to fraud, or that fraud cannot be controlled without direct interconnection of switches. We seek further comment on these arguments. We note that cellular carriers have exercised various options to protect themselves under the existing manual roaming rule, such as requiring manual roamers to supply a valid credit card number. We seek comment on whether similar protective measures would be available and equally effective if an automatic roaming rule is adopted. We also seek comment on whether carriers could include in their agreements with other carriers provisions to suspend roaming service in case of fraud, or other appropriate anti-fraud provisions, so long as they do so on a nondiscriminatory basis, and whether a particular carrier that poses an unusually high risk of fraud (for example, a carrier that is located in an area where fraud is especially prevalent or that is known to have poor mechanisms for fraud control) could for that reason be differently treated with respect to the terms of a roaming agreement.

B. Sunset

31. Pacific's expert argues that roaming regulations should apply only for a transitional period. At the end of the transitional period, he states, the rules will become unnecessary because competition will have developed to the point that market forces will cause roaming to become available where it is economically efficient.

32. We agree with this analysis. We believe that once broadband PCS providers' buildout periods are completed, sufficient wireless capacity will be available in the market and, as a result, any roaming regulations, whether manual or automatic, likely will become superfluous. We believe that, given the availability of sufficient capacity, a carrier would not have either the incentive or the ability to unreasonably deny manual roaming to an individual subscriber, or to unreasonably refuse to enter into an automatic roaming agreement with another CMRS provider, because some other carrier in its service area would be willing to do so. We anticipate, due to our broadband PCS build-out requirement, that the market for cellular, broadband PCS and covered SMR services will be substantially competitive within five years after we complete the initial round of licensing broadband PCS providers. We therefore believe that any action taken concerning automatic roaming should sunset five years after we award the last group of initial licenses for currently allocated broadband PCS spectrum. We seek comment on this issue. We also seek comment on whether, for the same reasons, the manual roaming rule we adopt today also should sunset at the expiration of this five-year period. We note that this is the same sunset period that we recently adopted for our resale rule, and that the commencement of the five-year period will be announced by Public Notice.

C. Other Issues

33. In order to provide automatic roaming and adequately protect itself against fraud, a carrier would have to make arrangements with a subscriber's home system to verify the validity of the subscriber's account. In the Second NPRM, we noted that such arrangements, as well as other arrangements that may be necessary for subscribers to use special features while roaming, may implicate concerns relating to subscriber privacy and carrier control over proprietary information, and we requested comment on these issues. Since that time, however, Congress has amended the Communications Act by adding a new Section 222, which generally prohibits a carrier that obtains proprietary information from another carrier for purposes of providing a telecommunications service from using that information for any other purpose. We tentatively conclude that the treatment of roaming-related access to proprietary information is governed by Section 222. We seek comment on this analysis.

34. Bell Atlantic and Bell Atlantic NYNEX ask us to preempt state regulation of roaming. Neither these parties nor any other commenters, however, supply any evidence that states have attempted to regulate roaming. We therefore see no basis for addressing the issue of preemption at this time. We note, however, that any automatic roaming rules would apply to both interstate and intrastate roaming if they were made a condition of license pursuant to Sections 303(r) and 309 of the Act. We further note that the states are preempted by statute from any regulation of intrastate roaming that would constitute the regulation of CMRS entry or rates. We seek comment on this analysis.

35. Finally, Comcast proposes that we facilitate interoperability among CMRS systems by implementing government-industry joint studies through the Office of Engineering and Technology. Comcast's proposal is beyond the scope of this proceeding, and we do not address it herein. We plan to address issues of interconnectivity and interoperability generally in a rulemaking proceeding that we will commence in the near future to implement Section 256 of the Communications Act.

IV. CONCLUSION

36. We conclude that, under current market conditions, the widespread availability of roaming capability on cellular, broadband PCS and covered SMR networks promotes the public interest in nationwide, ubiquitous, and competitive telecommunications service, and that, under current market conditions, market forces alone may not always produce such a result. We therefore require cellular, broadband PCS and covered SMR licensees to provide manual roaming service upon reasonable request to any subscriber to any of these services whose handset is capable of accessing their systems. We also seek comment on whether we should adopt rules governing cellular, broadband PCS and covered SMR providers' obligations to provide automatic roaming service.

V. PROCEDURAL MATTERS

A. Filing Procedures

37. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before October 4, 1996, and reply comments on or before November 22, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eight copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington D.C. 20554. A copy of each filing also should be sent to International Transcription Service (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800, and to Rita McDonald, Federal Communications Commission, Wireless Telecommunications Bureau (WTB), Policy Division, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20054.

38. Parties are encouraged to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements presented above. Parties submitting diskettes should submit them to Rita McDonald of the WTB Policy Division. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows software. The diskette should be submitted in "read only" mode, and should be clearly labeled with the party's name, the proceeding (CC Docket No. 94-54), the type of pleading (comment or reply comment) and the date of submission.

39. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. B. Regulatory Flexibility Act

40. As required by Sections 603 and 604 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) and an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the rules adopted and proposed in this document. The FRFA and IRFA are set forth in Appendices B and C of this document, respectively. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

C. Authority

41. This action is taken pursuant to Sections 1, 4(i), 4(j), 201, 202, 303(r), 309, 332, and 403 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 303(r), 309, 332, 403.

D. Further Information

42. For further information regarding this Order, contact Jeffrey Steinberg of the Wireless Telecommunications Bureau Policy Division, at 202-418-1310.

VI. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED that the rule amendments appearing at Appendix D and discussed herein ARE ADOPTED and SHALL BE EFFECTIVE sixty days following publication in the Federal Register.
FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

Acting Secretary

APPENDIX A

Parties Filing Comments

1. AirTouch Communications, Inc. (AirTouch) 2. All Cellular, Inc. 3. Alltel Mobile Communications, Inc. (Alltel) 4. American Mobile Telecommunications Association, Inc. (AMTA) 5. American Personal Communications (APC) 6. American Tel Group 7. Ameritech 8. AT&T Corporation (AT&T) 9. Bell Atlantic Mobile Systems, Inc. (Bell Atlantic) 10. BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp. (BellSouth) 11. Cellnet Communications, Inc. 12. Cellnet of Ohio, Inc. (Cellnet of Ohio) 13. Cellular Service, Inc. and ComTech Mobile Telephone Company (CSI/ComTech) 14. Cellular Telecommunications Industry Association (CTIA) 15. Comcast Cellular Communications, Inc. (Comcast) 16. Connecticut Telephone and Communication Systems, Inc. (Connecticut Telephone) 17. E.F. Johnson Company (E.F. Johnson) 18. Frontier Cellular Holding Inc. (Frontier) 19. General Communication, Inc. (GCI) 20. General Services Administration (GSA) 21. Geotek Communications, Inc. (Geotek) 22. GTE Service Corporation (GTE) 23. Horizon Cellular Telephone Company (Horizon) 24. In-Flight Phone Corporation (In-Flight) 25. Information Technology Association of America (ITAA) 26. WorldCom, Inc. d/b/a LDDS WorldCom (LDDS) 27. MCI Telecommunications Corporation (MCI) 28. MobileMedia Communications, Inc. (MobileMedia) 29. MobileOne 30. Molasky, Andrew M. 31. National Telephone Cooperative Association (NTCA) 32. National Wireless Resellers Association (NWRA) 33. New Par 34. New York Telephone Company, New England Telephone & Telegraph Company, and NYNEX Mobile Communications Company (NYNEX) 35. Nextel Communications, Inc. (Nextel) 36. Pacific Telesis Mobile Services and Pacific Bell Mobile Services (Pacific) 37. Paging Network, Inc. (PageNet) 38. PCS Primeco, L.P. (PCS Primeco) 39. Personal Communications Industry Association (PCIA) 40. Rural Cellular Association (RCA) 41. Rural Cellular Coalition (RCC) 42. San Diego Cellular Communications, Inc. 43. SNET Cellular, Inc. (SNET) 44. The Southern Company (Southern) 45. Southwestern Bell Mobile Systems, Inc. (SBMS) 46. Sprint Telecommunications Venture (Sprint Venture) 47. Telecommunications Resellers Association (TRA) 48. Time Warner Telecommunications (Time Warner) 49. Vanguard Cellular Systems, Inc. (Vanguard) 50. Western Wireless Corporation (Western) 51. WJG Maritel Corporation (WJG Maritel)

Parties Filing Reply Comments

1. AirTouch
2. Allnet Communication Services, Inc. (Allnet)
3. AMTA
4. Ameritech
5. AT&T
6. Bell Atlantic NYNEX Mobile, Inc. (Bell Atlantic NYNEX)
7. BellSouth
8. Cable & Wireless, Inc. (Cable & Wireless)
9. People of the State of California and the Public Utilities Commission of California (California)
10. CSI/ComTech
11. CTIA 12. Connecticut Telephone
13. E.F. Johnson
14. GSA
15. Geotek
16. GTE
17. In-Flight
18. MCI
19. National Association of Regulatory Utility Commissioners (NARUC)
20. NWRA
21. New Par
22. Nextel
23. Pacific Bell Mobile Services (Pacific)
24. PageNet
25. PCS Primeco
26. PCIA
27. SNET
28. Southern
29. SBMS
30. Sprint Venture
31. TRA
32. U.S. AirWaves Inc. (U.S. AirWaves)
33. Vanguard
34. Waterway Communication System, Inc. (Watercom)

APPENDIX B

Final Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Notice of Proposed Rulemaking in this proceeding (Second NPRM). The Commission sought written public comments on the proposals in the Second NPRM, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Second Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

I. Need for and Purpose of this Action:

In this decision, the Commission extends its existing rule under which cellular licensees are required to provide manual roaming service upon request to subscribers in good standing of any cellular carrier. Under the rule adopted in this decision, cellular, broadband personal communications services (PCS), and certain specialized mobile radio (SMR) licensees must provide manual roaming service upon request to subscribers in good standing of all such carriers, provided the subscriber is using a handset that is technically capable of accessing the licensee's system. This action will ensure that customers of all providers competing in the mass market for two-way, real-time, interconnected switched voice service have an equal opportunity to obtain manual roaming service, if they are using technically compatible equipment. In this way, the rule will promote the development of competition by ensuring that newer entrants to the market, as well as competitors without extensive affiliations, are not competitively disadvantaged by the inability of their subscribers to roam.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

No comments were filed in direct response to the IRFA. In general comments on the Second NPRM, however, several commenters raised issues that might affect small entities. Some of these commenters argued that the Commission should adopt a roaming rule in order to protect the ability of carriers without a nationwide footprint or extensive affiliations to compete. Other commenters, however, expressed concern that compliance with a requirement to offer roaming could be technically infeasible or unduly costly under some circumstances. In particular, several commenters urged the Commission not to require carriers to adopt particular technologies or modify their networks in order to facilitate roaming. Some commenters also argued that a roaming requirement could expose carriers to financial losses due to fraud. Two alliances of rural cellular carriers argued that, in drafting any roaming rule, the Commission should consider the technical obstacles faced by providers that do not have SS7 capability, as well as rural cellular licensees' alleged lack of market power.

III. Description and Estimate of the Small Entities Subject to the Rules:

The rule adopted in this Second Report and Order will apply to cellular, broadband PCS, and geographic area 800 MHz and 900 MHz SMR licensees, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under Section 90.629 of the Commission's Rules. However, the rule will apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network.

A. Estimates for Cellular Licensees

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to determine the precise number of cellular firms which are small businesses.

The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees. We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

Two alliances of rural cellular licensees filed comments in which they argued that a roaming rule may have an especially large impact on rural licensees. In its comments, the Rural Cellular Coalition states that it has 12 members which serve licensed cellular areas encompassing approximately 3 million people; the Rural Cellular Association states that its members serve areas with a cumulative population of more than 6 million. We do not have information, however, sufficient to support a meaningful estimate regarding the total number of rural licensees, nor do we have specific information regarding how many rural cellular licensees are small entities. For purposes of this FRFA, we assume that all rural cellular licensees are small entities, as that term is defined by the SBA.

B. Estimates for Broadband PCS Licensees

The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 C.F.R. § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of not more than \$40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.

The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auctions. Based on this information, we conclude that the number of broadband PCS licensees affected by the rule adopted in this Second Report and Order includes the 90 winning bidders that qualify as small entities in the Block C broadband PCS auctions.

At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of not more than \$125 million. However, we cannot estimate how many of these licenses will be won by small entities, nor how many small entities will win D and E Block licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

C. Estimates for SMR Licensees

Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average gross revenues of not more than \$15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.

The rule adopted in this Second Report and Order applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over \$15 million in revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Second Report and Order includes these 60 small entities.

No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet

determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate; moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

IV. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements:

The rule adopted in this Second Report and Order imposes no reporting or recordkeeping requirements. The only compliance requirement is that licensees subject to the rule (i.e., cellular licensees, broadband PCS licensees, and geographic area 800 MHz and 900 MHz SMR licensees that offer real-time, two-way, interconnected switched voice service) must provide manual roaming service upon request to subscribers in good standing of covered services who are using technically compatible equipment.

V. Steps Taken to Minimize the Economic Impact on Small Entities:

The rule adopted in this Second Report and Order only requires certain CMRS licensees to provide manual roaming service to eligible subscribers upon request. The Commission determines on the present record not to promulgate any rule governing roaming agreements between carriers, but instead to request further comment regarding the need for any such rule and the costs that it would impose. Thus, the Commission in this Second Report and Order avoids potential burdens that a rule governing intercarrier roaming agreements might impose on small entities, including questions regarding the feasibility and cost of offering automatic roaming under certain circumstances, the administrative costs of entering into roaming agreements, and possible exposure to fraud. Furthermore, the rule requires covered licensees to provide service only to subscribers who are using equipment that is technically capable of accessing their systems. The rule therefore does not require carriers to adopt particular technologies or to modify their networks to accommodate roamers using different technologies. Because the rule neither requires carriers to enter into roaming agreements nor impacts their technological choices, it does not implicate the concerns raised by rural carriers.

The Commission also determines not to apply its roaming rule to CMRS providers other than cellular, broadband PCS and certain SMR licensees. Many of the providers that are thereby excluded from the rule are small entities, including paging, narrowband PCS, air-ground, public coast service, and non-covered SMR providers. In addition, the Commission requests comment on whether it should sunset the rule adopted herein five years after it awards the last group of initial licenses for currently allotted broadband PCS spectrum.

Finally, the Commission believes that the rule adopted in this Second Report and Order will benefit certain small entities by ensuring that subscribers of providers that do not have a nationwide presence or affiliations will have the same right to obtain roaming service as subscribers to competing larger carriers, provided they are using technically compatible equipment.

VI. Significant Alternatives Considered and Rejected:

The Commission considered and rejected the alternative of not extending its existing manual roaming rule beyond cellular licensees and cellular subscribers. Instead, the Commission concluded that the rule should extend to broadband PCS and covered SMR services in order to protect smaller and newer providers of these services from likely competitive disadvantage. At the same time, the Commission rejected the alternative of extending the rule to other CMRS services because the record did not establish that ubiquitous roaming capability is important to the competitive success or utility of these services. The Commission also rejected the alternative of promulgating a rule governing intercarrier roaming agreements in this Second Report and Order because the record did not sufficiently illuminate the costs and benefits of any such rule. Finally, the Commission rejected any alternative that would require carriers to adopt particular technologies or modify their physical networks.

VII. Report to Congress:

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to SBREFA, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

APPENDIX C

Initial Regulatory Flexibility Analysis . I. Reason for Action:

This Third Notice of Proposed Rulemaking (Third NPRM) requests comment on whether the Commission should promulgate transitional regulations governing certain commercial mobile radio service (CMRS) providers' obligations to enter into "automatic" roaming agreements with other carriers. The Commission determines that a further NPRM is necessary because the existing record does not sufficiently illuminate the costs and benefits of an automatic roaming rule. In particular, at the time comments were filed no broadband PCS providers were in operation, and most providers were only beginning to formulate their business plans. Therefore, the record does not reflect the actual experience of broadband PCS providers in attempting to negotiate roaming agreements. Although some comments in the record suggest that an automatic roaming rule may be necessary to ensure new entrants an equal opportunity to compete, other commenters argue that established providers do not have an incentive to deny automatic roaming agreements or unreasonably discriminate against new entrants.

The Commission also requests comment on whether the manual roaming rule adopted in the Second Report and Order should sunset five years after the last group of initial licenses for currently allotted broadband PCS spectrum is awarded. Although the Commission expects that market forces will render a manual roaming rule unnecessary once broadband PCS licensees have substantially built out their networks, the existing record is insufficiently developed to support a decision regarding the advantages, disadvantages, and implications of sunsetting the manual roaming rule.

II. Objectives of Proposed Rules:

The Commission's principal objective in this Third NPRM is to obtain information on the costs and benefits of an automatic roaming rule. In particular, the Commission seeks comment on whether it should adopt a rule requiring providers that enter into roaming agreements with any other provider to make like agreements available to similarly situated providers under nondiscriminatory rates, terms, and conditions. The Commission also seeks comment on the potential costs of an automatic roaming rule, including whether such a rule would inadvertently impede technological progress, whether it would interfere with free and open competition, whether it would expose providers to the risk of losses due to fraud, and what administrative costs would be involved. The Commission seeks comment on how any rule should be drafted to minimize such costs. An additional objective is to obtain information on the advantages, disadvantages, and implications of sunsetting the manual roaming rule.

III. Legal Basis for Proposed Rules:

If adopted, any changes to the Commission's roaming rules would be authorized under Sections 1, 4(i), 4(j), 201, 202, 303(r), 309, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 303(r), 309, 332, 403.

IV. Description and Estimate of Small Entities Subject to the Rules:

Pursuant to the Contract with America Advancement Act of 1996, the Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total CMRS entities would be affected by the regulations on which the Commission seeks comment in this Third NPRM. In particular, we seek estimates of how many affected entities will be considered small businesses.

The regulations on which the Commission seeks comment, if adopted, would apply to providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under Section 90.629 of the Commission's Rules. However, the rules would apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network.

As explained in the Final Regulatory Flexibility Analysis for the Second Report and Order (Appendix B), there are different definitions of "small business" for the various services affected by this proceeding. Since the Commission has not defined small business with respect to cellular service, we are utilizing the Small Business Administration's definition applicable to radiotelephone companies -- i.e., an entity employing fewer than 1,500 persons. With respect to broadband PCS, the Commission has refined the definition of a small business to mean firms that have had average gross revenues of not more than \$40 million in the preceding three calendar years. With respect to 800 MHz and 900 MHz SMR services, the Commission has defined small businesses as firms that have had average gross revenues of not more than \$15 million in the preceding three calendar years.

We seek comment as to whether our use of these definitions is appropriate in this context. Additionally, we request commenters to identify whether they are small businesses under these definitions. For commenters that are a subsidiary of another entity, we seek this information for both the subsidiary and the Parent Corporation or entity.

V. Reporting, Recordkeeping, and Other Compliance Requirements:

The proposals under consideration in this Third NPRM would not involve any reporting or recordkeeping requirements. The only likely compliance requirement would be to refrain from prohibited discrimination in offering roaming agreements to other carriers. If a sunset of the manual roaming rule is adopted, the effect would be to relieve affected providers from compliance requirements after the sunset takes effect.

VI. Significant Alternatives Considered and Rejected:

The Commission considered and rejected the alternative of adopting an automatic roaming rule in the Second Report and Order. The Commission concluded that the record did not establish that an automatic roaming rule is necessary, nor did it sufficiently develop the costs of any such rule. At the same time, the Commission rejected the alternative of declining to adopt an

automatic roaming rule without further inquiry. Some commenters made cogent arguments that established providers might have the ability and incentive to disadvantage their competitors by denying them nondiscriminatory roaming agreements, and the Commission believed these arguments should be further explored in light of ongoing developments.

The Commission did determine, however, that certain forms of regulation should not be proposed in the Third NPRM. In particular, the Commission rejected any proposal that would require carriers to adopt particular technology or modify their networks so as to offer roaming arrangements to any provider. Similarly, the Commission determined not to propose regulation of agreements between carriers to hand off calls in progress because the record indicated that such arrangements may be technically and administratively complex and because there was no evidence that access to such arrangements is important to providers' ability to compete. The Commission also rejected any alternative that would require carriers to do more than refrain from discrimination among similarly situated providers. Thus, the Commission does not propose to require carriers to offer roaming agreements under any particular terms and conditions, or even to offer roaming service to any carrier at all.

In addition, the Commission rejected the alternative of proposing to apply any automatic roaming rule to CMRS providers other than cellular, broadband PCS, and covered SMR carriers because the record did not establish that ubiquitous roaming capability is important to the competitive success or utility of these services. The Commission also rejected the alternative of proposing to continue any automatic roaming rule indefinitely because it believes that any necessity that may now exist for such a rule would be obviated once broadband PCS networks are substantially built out. With respect to manual roaming, the Commission requests comment on a sunset for similar reasons, but it rejected the alternative of imposing a sunset in the Second Report and Order because the existing record does not sufficiently develop the implications of such a sunset.

VII. Federal Rules That Overlap, Duplicate, or Conflict with These Proposed Rules:

None.

VIII. IRFA Comments:

We request written public comment on the foregoing Initial Regulatory Flexibility Analysis (IRFA). Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines specified in paragraph 37 of the Second Report and Order and Third Notice of Proposed Rulemaking.

APPENDIX D

Final Rules

Parts 20 and 22 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

Part 20 - COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1092, as amended; 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. Section 20.12 is amended by revising the heading and adding new paragraph (c) to read as follows:

Section 20.12 Resale and roaming.

(c) Roaming. Each licensee subject to this Section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this Section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

Part 22 - PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. Section 22.901 is amended by revising the introductory paragraph to read as follows:

Section 22.901 Cellular service requirements and limitations.

Cellular system licensees must provide cellular mobile radiotelephone service upon request to subscribers in good standing, including roamers, as provided in § 20.12 of this chapter. A cellular system licensee may refuse or terminate service, however, subject to any applicable requirements for timely notification, to anyone who operates a cellular telephone in an airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927.

June 27, 1996

SEPARATE STATEMENT OF
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COMMISSIONER RACHELLE B. CHO

Re: Interconnection and Resale Obligations Pertaining to
Commercial Mobile Radio Services, Second Report and Order and Further Notice of
Proposed Rulemaking, CC Docket 94-54

In the early days of cellular telephones, the ability of customers to use their cellular phones when they were "roaming" outside of their home service area was limited. Not all cellular carriers offered roaming, and those who did, offered roaming only in select cities. When roaming was available, it was often a cumbersome process. For example, customers would have to give a valid credit card number to roam, and customers could not automatically receive calls when they were travelling. A caller trying to reach a roaming customer had to know what city the roamer was in and the roamer access number of that city. In those early days, roaming was also expensive. It was common for systems to charge a daily access fee of several dollars in addition to a high per minute rate.

Today, the cellular industry has matured, and customer demand has resulted in roaming being widely available to cellular subscribers. Most cellular carriers have roaming agreements with cellular carriers in other markets that permit their customers to automatically roam in most parts of the nation. Cellular carriers have realized that many subscribers desire the ability to use their mobile phone when travelling, and these carriers welcome the additional roaming revenue realized.

The process of roaming is also significantly easier now. With the advent of such programs such as "follow me roaming," subscribers can now automatically receive calls almost anywhere they are roaming. In addition, many features (e.g. call waiting and call forwarding) now "follow" customers when they roam. Roaming rates have also decreased significantly. Many carriers have found that customers are more inclined to roam when they are guaranteed consistent nationwide or region-wide rates.

I note that all of these advancements in roaming occurred without a Commission rule or regulation requiring cellular carriers to enter into automatic roaming agreements with each other. For this reason and because competition in the Commercial Mobile Radio Service (CMRS) market is dramatically increasing with the introduction of multiple new PCS providers, I supported the original tentative conclusion in our Second Notice of Proposed Rulemaking (Second Notice) in this proceeding that we should monitor the development of roaming in the CMRS marketplace and not intervene unless and until a problem develops. In my view, nothing in the record we received in response to the Second Notice has convinced me that the imposition of a mandatory automatic roaming requirement is necessary at this juncture.

I write separately to explain why I supported our original tentative conclusion and to set forth some concerns about the imposition of an automatic roaming requirement as described in the

Third Further Notice of Proposed Rulemaking (Third Notice) portion of the item. I invite the parties to address these concerns in their comments on the Third Notice.

In general, I believe that market forces and competition should shape the development of wireless communications services. In my view, we should avoid unnecessary regulation unless an identifiable problem has developed. In the case of new players (PCS and the covered SMR providers) entering the current wireless market, I am not yet convinced that government needs intervene with regulations to ensure the widespread availability of automatic roaming agreements on reasonable terms and conditions.

Although some of the new entrants, the PCS providers, expressed concern in their comments a year ago that the incumbent cellular providers may refuse to enter into automatic roaming agreements with them for anticompetitive reasons, they have not yet provided us with evidence that any such denials are actually occurring. Thus, it appears that, at least at this time, their concern is of a speculative nature as opposed to grounded in actual experience. I recognize that the process of negotiating roaming agreements between the new entrants and the incumbents is just beginning. Should the situation change, however, and evidence be proffered to the Commission that incumbents are denying reasonable automatic roaming arrangements to new entrants in a discriminatory manner for anticompetitive reasons, I would support taking swift corrective action.

I further believe that regulation should be imposed only when it is necessary to serve the public interest. It has been argued that automatic roaming is critical during the "headstart" period when the new providers are entering the competitive wireless market so that they can effectively compete with the cellular incumbents. I am not convinced that a new entrant must have access to automatic roaming agreements with every CMRS provider in the nation in order to compete successfully in the wireless market. Traditionally, the majority of roaming takes place in markets near the home market. Unlike the smaller cellular geographic service areas, PCS service areas (MTAs and BTAs) are much larger in size. Thus, PCS customers can travel much further distances without having to roam. In addition, not all wireless customers require roaming capabilities as a condition of subscription. In this regard, it appears that the first broadband PCS system in the nation is very successfully attracting a large number of customers even though it is unable to offer any roaming capability at this time.

On the contrary, I have some concerns that the imposition of automatic roaming requirements might inadvertently hinder competition in the CMRS market in practice. In addition to cellular rates and service plans, cellular carriers compete vigorously in their marketing efforts on the basis of their roaming footprint and roaming rates. If we mandate an automatic roaming requirement, CMRS providers may not be able to differentiate their roaming products as they do today. This may actually serve to lessen overall competition in the CMRS market.

Finally, I believe that we need to carefully consider the burdens and costs associated with the imposition of an automatic roaming regulation. There are currently approximately 1,400 cellular systems. We anticipate that broadband PCS and covered SMR providers, once licensed, will more than double that number. If a CMRS carrier enters into one automatic roaming agreement (and nearly all do in adjacent areas as a practical matter), our rules may require that carrier to

enter into a like agreement with every similarly situated provider in the nation where technically compatible handsets are being used. Such a requirement could result in the imposition of significant network and administrative costs. These costs would only be increased if the roaming requirement were extended to resellers. I invite commenters to expand on what the scope of these network and administrative costs may be. I am particularly interested in hearing from small carriers as to whether they think they can absorb these costs or recover them from their customers or other carriers, should an automatic roaming requirement be imposed.