



Law Offices of
Bennet & Bennet, PLLC

10 G Street, NE, Seventh Floor
Washington, DC 20002
Tel: (202) 371-1500
Fax: (202) 371-1558
e-mail: mail@bennetlaw.com
www.bennetlaw.com

Caressa D. Bennet
Michael R. Bennet
Marjorie G. Spivak
Gregory W. Whiteaker
Howard S. Shapiro
Donald L. Herman, Jr.
Rebecca L. Murphy
Joshua P. Zeldis

Of Counsel
Michael K. Kurtis

Senior Communications Consultant
Kenneth C. Johnson

Director of Technical Services
Herbert C. Harris

Director of Government Affairs
Jessica H. Bridges

April 13, 2005

Via Electronic Mail

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Comments on Rural Roaming Topics for Consideration
WT Docket No. 00-193

Dear Ms. Dortch:

The Rural Telecommunications Group, Inc. (“RTG”) filed a Petition for Commission Action on November 1, 2004 requesting that the Commission, either on its own motion or pursuant to its informal request, refresh the record in the automatic roaming proceeding.¹ Since that time, it has come to RTG’s attention that the Commission is considering closing the automatic roaming proceeding without resolution of numerous rural-oriented roaming concerns that still need to be addressed. In discussions with the Commission, RTG has been asked to expound on those roaming issues that have impacted rural carriers. In that regard, Bennet & Bennet, PLLC, on behalf of RTG, presents the following issues for consideration in the above-referenced proceeding (or, alternatively, in a separate, narrowly-tailored rural roaming rulemaking proceeding):

- The Federal Communications Commission (“FCC” or “Commission”) should seek comment regarding significant industry changes that have occurred since the release of the *Automatic Roaming NPRM*² on November 1, 2000, especially with respect to recent market consolidations and mergers.³ In addition to the recent slate of mergers, the Commission should consider whether there are any other Commercial Mobile Radio Service (“CMRS”) industry changes and trends that affect roaming in rural areas.

¹ *In re Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Petition for Commission Action (November 1, 2001).

² *In re Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, FCC 00-361, 65 FR 69891, Notice of Proposed Rulemaking (November 1, 2000) (“*Automatic Roaming NPRM*”).

³ *Western Wireless Corporation and Alltel Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, DA 05-332 (February 7, 2005); *In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, et. al., FCC 04-255 (October 22, 2004) (“*AT&T/Cingular Order*”); *Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless Seek Commission Consent for the Assignment of Sixty-Two Broadband Personal Communications Services Licenses*, WT Docket No. 04-264, DA 04-2254, Public

- The Commission should determine whether recent CMRS industry mergers have created a market scenario where a virtual duopoly controls each CMRS technology type.⁴ Specifically, the FCC has recognized that “...GSM carriers do not have the ability to roam with CDMA carriers, and vice versa.”⁵ The FCC should seek comment on whether this technological barrier to roaming affects the rural marketplace. And, whether this technological barrier can be overcome by a technological solution.
- The Commission should seek comment on whether roaming issues should be examined on a nationwide or on a market-specific level.
- The Commission should seek comment on whether automatic roaming should be required under certain market conditions. Should automatic roaming be required in “rural” areas? How should the Commission define “rural” for the purposes of any rural roaming requirements?
- The Commission should seek comment regarding evidence of discriminatory roaming practices on an industry-wide basis.
- The Commission should seek comment on whether claims that roaming rates are declining among carriers⁶ is due to a more robust CMRS market or from the dwindling number of nationwide carriers favoring one another in “sweetheart” roaming agreements to the exclusion of other carriers.
- The Commission should seek specific incidences of wireless providers denying roaming agreements to other providers in a manner that harms consumers.
- The Commission should seek comment on whether large, nationwide carriers have begun “preferring” one another over other carriers in roaming agreements. If so, is such a preference a violation of the Communications Act of 1934, as amended (“Act”)? Specifically, do “sweetheart” deals violate Section 202(a) of the Act? Does any violation of Section 202(a) depend on the specific market?
- The Commission should seek comment on whether large, nationwide carriers are engaging in the practice of barring their subscribers’ access to networks operated by other carriers. The Commission should investigate whether the practice of blocking access to certain carriers’ networks violate a carrier’s obligation to provide service to all roamers within its market.⁷
- The Commission should determine whether large carriers have the ability to use their market power to develop one-sided roaming agreements, at terms more favorable to the larger carrier. The Commission should seek comment on whether reciprocal, rather than one-sided, automatic roaming arrangements should be required in specific markets.
- The Commission should seek comment on whether the large, nationwide carriers control “bottleneck” facilities.
- The Commission should seek comment on whether large carriers should be required to make their networks available to all roaming partners on the same terms as conditions as they offer to its “most-favored” roaming partners.

⁴ With the merger of AT&T Wireless Services, Inc. (“AT&T”) and Cingular Wireless Corporation (“Cingular”), the number of nationwide carriers using global system for mobile communications (“GSM”) as their digital standard is reduced from three to two carriers (Cingular and T-Mobile). Currently, there are only two nationwide Code Division Multiple Access (“CDMA”) carriers (Verizon Wireless and Sprint).

⁵ *AT&T/Cingular Order* at ¶ 175.

⁶ The Cellular Telecommunications and Internet Association (“CTIA”) reported that roaming revenues for the CMRS industry declined from \$3.9 billion in 2002 to \$3.8 billion in 2003. *Id.* at ¶ 181.

Pursuant to Section 1.1206(b) of the Commission's Rule, this letter is being filed electronically. Please refer any questions regarding this matter to the undersigned.

Very truly yours,

/s/

Caressa D. Bennet

cc: Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Commissioner Martin
Mr. Barry Ohlson
Ms. Jennifer Manners
Ms. Sheryl Wilkerson
Mr. Samuel Feder
Mr. Paul Margie
Mr. Peter Tenhula
Mr. Greg Vadas
Ms. Elizabeth Mumaw
Ms. Rosemary McEnergy
Ms. Renee Crittendon