

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

In the Matter of )  
 )  
Automatic and Manual Roaming ) WT Docket No. 00-193  
Obligations Pertaining to )  
Commercial Mobile Radio Services )  
 )

To: The Commission

**PETITION FOR COMMISSION ACTION**

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys and pursuant to Sections 1.1 and 1.41 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> hereby requests that the Commission, either on its own motion or pursuant to this petition, refresh the record in the above-referenced proceeding. It has been four years since the Commission released its Notice of Proposed Rulemaking (“NPRM”) to consider whether the Commission should adopt an “automatic” roaming rule that would apply to Commercial Mobile Radio Service (“CMRS”) providers.<sup>2</sup> Significant industry changes have occurred since the release of the *Automatic Roaming NPRM* on November 1, 2000, especially with respect to recent market consolidations and mergers,<sup>3</sup> which necessitate a fresh look at

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<sup>1</sup> 47 C.F.R. §§ 1.1 and 1.41.

<sup>2</sup> *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*”).

<sup>3</sup> *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 Wirelless, LLC and Cellco Partnership d/b/a Verizon Wireless Seek Commission Consent for the*

competitive roaming conditions and their effect on customers in all regions of the nation, and most significantly, rural regions.

Since November 2000, the CMRS industry continued to expand from its beginnings as a cellular duopoly. Through the buildout of competing CMRS systems and the use of automatic roaming, carriers have developed virtual nationwide footprints where consumers can seamlessly move from one compatible network to another. At the same time, however, the CMRS industry has experienced a wave of market consolidation that has had the effect of lessening competition in rural areas. As the Commission points out in its Order granting the merger between AT&T Wireless Services, Inc. (“AT&T”) and Cingular Wireless Corporation (“Cingular”), the proposed merger will reduce the number of nationwide carriers using global system for mobile communications (“GSM”) as their digital standard from three to two (Cingular and T-Mobile).<sup>4</sup> Likewise, the Commission notes that currently there are only two nationwide Code Division Multiple Access (“CDMA”) carriers (Verizon Wireless and Sprint).<sup>5</sup> This has created a market scenario where a virtual duopoly controls each CMRS technology type where, as the FCC has recognized, “...GSM carriers do not have the ability to roam with CDMA carriers, and vice versa.”<sup>6</sup>

When the FCC initiated its automatic roaming proceeding in November 2001, it did so since “a new docket dedicated solely to roaming issues best ensures that we will have up-to-date, pertinent information as we consider whether, *given the state of today’s*

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*Assignment of Sixty-Two Broadband Personal Communications Services Licenses*, WT Docket No. 04-264, DA 04-2254, Public Notice (July 22, 2004).

<sup>4</sup> *AT&T/Cingular Order* at ¶ 177.

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

<sup>6</sup> *Id.* at ¶ 175.

*marketplace*, there is a need for a regulatory regime for roaming services.”<sup>7</sup> Based on substantial CMRS industry consolidation and continued advancements in CMRS technologies since 2000, there is even a stronger need than there was in 2000 for the Commission to seek comment on and examine the automatic roaming marketplace.<sup>8</sup>

### **I. Competitive Roaming Issues Remain Unexamined**

The recent FCC grant of the proposed AT&T/Cingular merger leaves many a question and assertion regarding the competitive roaming marketplace unanswered and unexamined. While the Commission in its *AT&T/Cingular Order* addressed roaming concerns in light of potential competitive harm with regards to the *specific* AT&T/Cingular business venture, the FCC’s statutory and public interest merger review is not, and should not be, the proper administrative vehicle for examining automatic roaming. In the interest of expediting commerce, the AT&T/Cingular merger review could not focus on broader nationwide automatic roaming issues (nor should it). However, the automatic roaming issues examined in the particular context of the AT&T/Cingular proposed merger, now that the merger has been approved, deserve a more thorough examination on a nationwide and market-specific level.

The *AT&T/Cingular Order* only touched upon competitive roaming concerns, dismissing anti-competitive concerns voiced by some commenters for a lack of specifics or evidence.<sup>9</sup> Specifically, Public Service Communications (“PSC”), National Telecommunications Cooperative Association (“NTCA”), and Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)

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<sup>7</sup> *Automatic Roaming NPRM* at ¶ 1 (emphasis added).

<sup>8</sup> RTG specifically questions whether consumers even understand that manual roaming is an option available to them.

<sup>9</sup> See *AT&T/Cingular Order* at ¶ 181.

contended that Cingular and AT&T Wireless have begun shifting traffic to each other's networks and away from rural carriers with which they used to roam and that, after the merger, Cingular might engage in discriminatory acts such as charging certain rural carriers roaming premiums.<sup>10</sup> Consumer's Union ("CU") and the Consumer Federation of America ("CFA") also expressed concern that Cingular could leverage its substantially increased subscriber share to exact discriminatory roaming rates. In dismissing all these concerns, the Commission cited a lack of "evidence" or "specific allegations."<sup>11</sup> Now is the time for the Commission to refresh the record on automatic roaming and seek comment regarding evidence of discriminatory roaming practices on an industry-wide basis. Such an inquiry would address, on a nationwide and market-specific basis, Commission concerns about "unreasonable conduct such as blocking subscribers' access to other carriers' networks."<sup>12</sup>

The Commission needs to examine whether claims that roaming rates are declining among carriers<sup>13</sup> 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's concern, voiced in the *AT&T/Cingular Order*, whether roaming partners may "pay higher roaming rates that are passed on to their customers, or the roaming partners' customers are no longer able to obtain roaming services in certain markets and they cannot replace that loss with

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<sup>10</sup> *Id.* at ¶ 171.

<sup>11</sup> *Id.* at ¶ 181.

<sup>12</sup> *Id.* at ¶ 182. *See also* Snake River Personal Communications Services, Informal Request for Commission Action, WT Docket No. 04-264, filed September 13, 2004.

<sup>13</sup> 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.

equivalent or superior alternatives”<sup>14</sup> needs to be addressed on a nationwide and market-specific basis. The FCC addressed these questions and anti-competitive concerns in its *Automatic Roaming NPRM* when it sought comment on whether “there is any history of wireless providers denying roaming agreements to other providers in a manner that harms consumers.”<sup>15</sup> Today, in light of the AT&T/Cingular proposed merger and similar proposed mergers such as the Verizon Wireless and Qwest transfer,<sup>16</sup> this and other automatic roaming questions are in need of answers.

The Commission also needs to examine whether the large, nationwide carriers have begun “preferring” one another over other carriers in roaming agreements. Such a practice appears to be a violation of the Communications Act. Section 202(a) specifies that:

*It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.*<sup>17</sup>

If the record demonstrates that large carriers have begun to favor one another, the Commission needs to determine whether such a practice is justifiable or whether it is essentially “squeezing out” smaller carriers.

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<sup>14</sup> *Id.* at ¶ 172.

<sup>15</sup> *Automatic Roaming NPRM* at ¶ 18.

<sup>16</sup> *In re 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. 04-265, Public Notice, DA 04-2254 (July 22, 2004).

<sup>17</sup> 47 U.S.C. § 202(a).

The Commission must also determine whether large, nationwide carriers are engaging in the practice of barring their subscribers' access to networks operated by other carriers. Large carriers can use such market power to develop one-sided roaming agreements, at terms more favorable to the larger carrier. The practice of blocking access to certain carriers' networks violates a carrier's obligation to provide service to all roamers within its market.<sup>18</sup> The Commission recognized the potential anticompetitive harm to consumers of this practice when it conditioned its approval of the Cingular/AT&T merger on Cingular's discontinuance of this practice.<sup>19</sup>

Finally, the Commission needs to examine potential anticompetitive consequences since large carriers now control essentially "bottleneck" facilities. Specifically, since the roaming rules were first written, the large carriers have been able to obtain their own spectrum and overbuild the higher-traffic portions of the rural markets. As such, they are now in the position of being far less dependent upon the rural carrier than the rural carrier is on the large carrier. In light of these changes, the Commission should consider whether a large carrier should be required to make its network available to all roaming partners on the same terms as conditions as it offers to its "most-favored" roaming partners.

## **II. The Commission Has the Authority to Refresh this Proceeding**

Under its general authority pursuant to Section 1.1 of the FCC's Rules, the Commission may, on its own motion or pursuant to a petition by an interested party, seek "information necessary or helpful in the determination of its policies."<sup>20</sup> On numerous

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<sup>18</sup> 47 C.F.R. § 20.12(c).

<sup>19</sup> *AT&T/Cingular Order* at ¶ 182.

<sup>20</sup> 47 C.F.R. § 1.1

occasions, the Commission has exercised this authority and refreshed the record in a “stale” proceeding.<sup>21</sup> There is no doubt that the FCC’s automatic roaming proceeding is “stale” since there have been massive industry shifts and changes since it was initiated back in November 2000. Further, in light of the Commission’s recent merger-based review of some of these pressing automatic roaming issues, the record regarding many of these competitive roaming issues, especially on a nationwide and market-specific basis, including rural markets, needs to be refreshed in a non-merger proceeding.

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<sup>21</sup> See, for example, *Parties Asked to Refresh Record Regarding Reconsideration of Price Cap Performance Review for Local Exchange Carriers Fourth Report and Order and Access Charge Reform Second Report and Order*, CC Docket Nos. 94-1 and 96-262, Public Notice, DA 04-2475 (Wire. Comp. Bur., Aug. 5, 2004); *Further Comment Requested on the Appropriate Treatment of Sharing and Low-End Adjustments Made by Price Cap Local Exchange Carriers in Filing 1993 and 1994 Interstate Access Tariffs, 1993 Annual Access Tariffs*, CC Docket No. 93-193, *1994 Annual Access Tariffs*, CC Docket No. 94-65, Public Notice, 18 FCC Rcd 6483 (2003); *International Bureau Announces Final Opportunity for Parties to Refresh the Record Regarding Reconsiderations of Rules Adopted in the Preemption of Local Zoning Regulations of Satellite Earth Stations*, Public Notice, IB Docket No. 95-59, 17 FCC Rcd 1826 (rel. February 1, 2002); *Parties Asked to Refresh Record Regarding Reconsideration of Rules Adopted in Preemption of Local Zoning Regulation of Satellite Earth Stations*, Public Notice, IB Docket No. 95-59, DA 01-2323 (rel. Oct. 5, 2001); *The Common Carrier Bureau Asks Parties to Update and Refresh Record for the Inmate Payphone Service Proceeding*, CC Docket No. 96-128, Public Notice, 14 FCC Rcd 7085 (1999) (Public Notice).

### **III. Conclusion**

For the afore-mentioned reasons, RTG respectfully requests that the Commission, either on its own motion or pursuant to this informal request, refresh the record in its automatic roaming proceeding.

Respectfully submitted,

**RURAL TELECOMMUNICATIONS  
GROUP, INC.**

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