

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

[WT Docket No. 05–265; FCC No. 07–143]

#### Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC) clarifies by final rule that automatic roaming is a common carrier obligation for commercial mobile radio service (CMRS) carriers, requiring them to provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis.

**DATES:** This rule is effective October 29, 2007.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, WT Docket No. 05–265, FCC No. 07–143, adopted August 7, 2007 and released August 16, 2007. The full text of the Report and Order is available for public inspection on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

#### Final Paperwork Reduction Act of 1995 Analysis

The Report and Order does not contain an information collection subject to the Paperwork Reduction Act of 1995, and therefore 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.

#### Synopsis

1. In this Report and Order, the Commission finds that automatic roaming is a common carrier obligation pursuant to Sections 201 and 202 of the Communications Act, and discusses the scope of the automatic roaming obligation for commercial mobile radio service (CMRS) carriers. The Commission also declines to regulate the automatic roaming rates and addresses 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. Finally, the Commission codifies the automatic roaming obligations into a rule, imposing an affirmative obligation to provide automatic roaming on CMRS carriers under certain conditions, denies the petition for investigation pursuant to Section 403 of the Act, and declines to sunset the existing manual roaming rule at this time.

2. The Commission believes its 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.

#### A. Automatic Roaming Obligations

##### 1. Automatic Roaming

3. The Commission clarifies 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. 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.

4. 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, as previously determined in CC Docket No. 94–54, published at 61 FR 44026, August 27, 1996.<sup>1</sup> 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 offered by non-communications entities such as credit card companies. The Commission also found that roaming satisfies all the statutory elements of commercial mobile radio service, 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." There are two forms of roaming—manual and automatic. The Commission finds 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.

5. 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," 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." 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. The Commission determines 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

<sup>1</sup> 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 Para. 10 (1996) ("Interconnection and Resale Obligations Second Report and Order" and "Interconnection and Resale Obligations Third NPRM," respectively).

public interest for that CMRS carrier to provide automatic roaming service on reasonable and non-discriminatory terms and conditions.

6. Additionally, the Commission determines 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. This ensures that all CMRS providers competing in the mass market for real-time, two-way voice and data services are similarly obligated to provide automatic roaming services, thereby equally benefiting all subscribers of mobile telephony services who seek to roam seamlessly over CMRS networks. The Commission also concludes, as it has 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. 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.

7. *Complaint Procedures.* Based on its finding that automatic roaming is a common carrier service, the Commission determines 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. There has been some confusion regarding whether the provisioning of automatic roaming services is subject to the requirements of Section 208. Given the fact-specific nature of the roaming issues that have come to light during this proceeding and several merger proceedings, the Commission concludes that many disputes involving automatic roaming services would be best resolved through an adjudicatory process. In deciding roaming complaints, the Commission 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. When roaming-related complaints are filed, the Commission intends to address them expeditiously on a case-by-case basis.

8. Further, the Commission notes that the Accelerated Docket procedure,

including pre-complaint mediation, is available to roaming complaints. 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. Although all roaming complaints will not automatically be 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.

9. *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), the Commission also establishes several rebuttable presumptions with respect to requests for automatic roaming and the would-be host carriers' response. The Commission 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. 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. 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.

10. 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.

2. Determination Not to Impose Rate Regulation on Roaming Agreements

11. 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. In particular, the Commission is not persuaded that consumers would be harmed in the absence of a price cap or some other form of rate regulation. The Commission believes 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.

12. The Commission finds 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 it makes herein with respect to automatic roaming, the Commission finds 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.

13. Because it is not persuaded that the existing level and structure of roaming rates negotiated between carriers harm consumers of mobile telephony services, the Commission does not need to address the argument that the state of competition in the intermediate product market is such as to warrant rate regulation.

14. Based on the foregoing considerations, the Commission concludes that regulation of roaming rates is not warranted on economic grounds. In addition, however, the Commission agrees 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. 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.

15. 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.

#### B. Other Issues

##### 1. "Most Favored" Roaming Partner Rates for Tier IV CMRS Providers

16. Since the Commission's determination that automatic roaming is common carrier service applies to all CMRS providers regardless of size, it declines to create a special Tier IV category for roaming services. The Commission also declines 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.

17. 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. 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. 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.

18. Accordingly, the Commission declines to mandate that a subcategory of CMRS carriers (*i.e.*, Tier IV providers) be entitled to the same rates as "most favored" roaming partners. The Commission similarly declines to impose such an obligation on only certain larger CMRS carriers. Instead, the Commission believes that its 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.

##### 2. In-Market or Home Roaming

19. The Commission determines that the automatic roaming obligation does not include an in-market or home roaming requirement. The Commission is 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 the Commission's 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.

20. 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 the Commission's public interest goals of encouraging facilities-based service and supporting consumer expectations of seamless coverage when traveling outside the home area. The Commission finds 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. 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. The Commission continues to encourage all CMRS carriers to negotiate desired terms and conditions of automatic roaming agreements, including automatic roaming in overlapping geographic markets.

21. 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). Within these overlapping geographic areas, the would-be host carrier is not required to comply with an automatic roaming request. This in-market or home 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.

22. Finally, the Commission also determines that the automatic roaming obligation under Sections 201 and 202 and the home roaming exclusion are not intended to resurrect CMRS resale obligations. 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. The Commission notes that its mandatory resale rule was sunset in 2002, and automatic roaming obligations can not be used as a backdoor way to create de facto mandatory resale obligations or virtual reseller networks.

##### 3. Access to Certain Data Features and Enhanced Digital Networks

###### (a) Access to Push-to-Talk, Text Messaging (SMS) and Non-Interconnected Data Features

23. 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. The Commission finds that it would serve the public interest to extend automatic roaming obligations to push-

to-talk and SMS. The Commission declines 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.

24. With respect to push-to-talk and SMS, the Commission notes 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. 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. The Commission is 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, the Commission finds 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; 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.

25. With respect to non-interconnected features or services, the Commission finds 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 that it might undercut incentives to differentiate products and could chill innovation. These opponents claim that extending roaming to non-interconnected features of a competitor's 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, the Commission believes it is in the public interest, however, to examine the issue of automatic roaming for non-interconnected features or services through a Further Notice of Proposed Rulemaking (FNPRM).

#### (b) Access to Enhanced Digital Networks

26. As previously explained, 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. As discussed above with respect to non-interconnected services, the Commission similarly declines 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. The Commission finds 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.

27. While the Commission finds 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, the Commission will examine this matter further in the FNPRM.

#### 4. Public Filing of Roaming Rates

28. The Commission declines 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. In light of its adoption of an automatic roaming rule as discussed below, the Commission finds that the available remedies for redress are sufficient to address disputes that may arise.

#### C. Codification of Automatic Roaming Obligations

29. The Commission codifies 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. 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. The Commission also notes that codification of an automatic roaming obligation gives CMRS carriers another avenue to redress roaming disputes, benefiting mobile telephony subscribers.

30. Finally, the Commission clarifies that automatic roaming, pursuant to Sections 201 and 202, as a common carrier obligation applies to CMRS carriers' analog networks. The Commission does 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. 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.

#### D. Petition for Investigation Pursuant to Section 403 of the Act

31. Because the Commission finds that the record is sufficient to codify automatic roaming obligations of CMRS carriers, the Commission denies the Joint Petition for Investigation Pursuant to Section 403, which petitioners contend will assist the Commission in gathering necessary information to support the adoption of an automatic roaming rule.

#### E. Manual Roaming

32. The Commission declines to sunset its existing manual roaming rule and, instead, retains it as a safety net for consumers. The Commission is aware that as automatic roaming becomes increasingly ubiquitous, it will render the need for manual roaming obsolete. The Commission notes, however, that the record demonstrates that automatic roaming is not available in certain instances today and, therefore, the continuing utility of the manual roaming rule in the immediate future is not completely obviated. For this reason, 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 there is no automatic roaming agreement in place.

### Final Regulatory Flexibility Analysis

33. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>2</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM in WT Docket No. 05–265, published at 70 FR 56612, September 28, 2005.<sup>3</sup> 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.<sup>4</sup>

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

34. 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 its rules related to 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.<sup>5</sup>

<sup>2</sup> 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. 104–121, Title II, 110 Stat. 857 (1996).

<sup>3</sup> 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).

<sup>4</sup> See 5 U.S.C. 604.

<sup>5</sup> 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 para. 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 paras. 1–14 (1996) (“Interconnection and Resale Obligations Second Report and Order” and “Interconnection and Resale Obligations Third NPRM,” respectively). See also 47 CFR 20.15.

35. 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.<sup>6</sup>

36. 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.

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

37. 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

38. 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.<sup>7</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>8</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>9</sup> A

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).

<sup>6</sup> Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, Declaratory Ruling, FCC No. 07–30, paras. 11–12 (rel. Mar. 23, 2007) (“Wireless Broadband Internet Access Declaratory Ruling”).

<sup>7</sup> 5 U.S.C. 604(a)(3).

<sup>8</sup> 5 U.S.C. 601(6).

<sup>9</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small

“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).<sup>10</sup>

39. 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.

40. 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.

41. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>11</sup> and “Cellular and Other Wireless

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.”

<sup>10</sup> 15 U.S.C. 632.

<sup>11</sup> 13 CFR 121.201, NAICS code 517211.

Telecommunications.”<sup>12</sup> 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.<sup>13</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>14</sup> 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.<sup>15</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>16</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

42. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category “Cellular and Other Wireless Telecommunications.”<sup>17</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>18</sup> 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.<sup>19</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>20</sup> Thus, under this category and

size standard, the majority of firms can be considered small.

43. *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.<sup>21</sup> 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.<sup>22</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>23</sup> 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.<sup>24</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>25</sup> On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.<sup>26</sup> 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.

44. *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.<sup>27</sup> Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> The SBA has approved these small business size standards.<sup>32</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.<sup>33</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

45. *Specialized Mobile Radio.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz

<sup>12</sup> 13 CFR 121.201, NAICS code 517212.

<sup>13</sup> 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).

<sup>14</sup> *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.”

<sup>15</sup> 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).

<sup>16</sup> *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.”

<sup>17</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>18</sup> *Id.*

<sup>19</sup> 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).

<sup>20</sup> *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.”

<sup>21</sup> 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 paras. 57–60 (1996); see also 47 CFR 24.720(b).

<sup>22</sup> 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 para. 60.

<sup>23</sup> 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.

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

<sup>25</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” public notice, 14 FCC Rcd 6688 (WTB 1999).

<sup>26</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” public notice, 16 FCC Rcd 2339 (2001).

<sup>27</sup> 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 para. 46 (1994).

<sup>28</sup> 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).

<sup>29</sup> 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 para. 40 (2000).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 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.

<sup>33</sup> See “Narrowband PCS Auction Closes,” public notice, 16 FCC Rcd 18663 (WTB 2001).

and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>34</sup> 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.<sup>35</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

46. 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.

47. 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.

48. *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.<sup>39</sup> 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.

49. *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.<sup>40</sup> 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.

50. *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.<sup>41</sup> The SBA has approved these definitions.<sup>42</sup> 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.

51. *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.<sup>43</sup> 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.<sup>44</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>45</sup> Thus, under this category and size standard, the majority of firms can be considered small.

52. *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

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

<sup>42</sup> 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.

<sup>43</sup> 13 CFR 121.201, NAICS code 517212.

<sup>44</sup> 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).

<sup>45</sup> *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.”

<sup>34</sup> 47 CFR 90.814(b)(1).

<sup>35</sup> *Id.*

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

<sup>37</sup> 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).

<sup>38</sup> See “Multi-Radio Service Auction Closes,” public notice, 17 FCC Rcd 1446 (WTB 2002).

<sup>39</sup> 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).

<sup>40</sup> 13 CFR 121.201, NAICS code 517212.

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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> The SBA has approved these small size standards.<sup>49</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup>

53. *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

<sup>46</sup> 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 paras. 291–295 (1997).

<sup>47</sup> *Id.* at 11068 para. 291.

<sup>48</sup> *Id.*

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

<sup>50</sup> See generally "220 MHz Service Auction Closes," public notice, 14 FCC Rcd 605 (WTB 1998).

<sup>51</sup> 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).

<sup>52</sup> See "Phase II 220 MHz Service Spectrum Auction Closes," public notice, 14 FCC Rcd 11218 (WTB 1999).

<sup>53</sup> See "Multi-Radio Service Auction Closes," public notice, 17 FCC Rcd 1446 (WTB 2002).

payments.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> SBA approval of these definitions is not required.<sup>57</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>58</sup> 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.<sup>59</sup>

54. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order authorizing service in the Upper 700 MHz band.<sup>60</sup> An auction for these

<sup>54</sup> 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).

<sup>55</sup> *Id.* at 5343 para. 108.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* At 5343 para. 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).

<sup>58</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," public notice, 15 FCC Rcd 18026 (2000).

<sup>59</sup> See "700 MHz Guard Bands Auctions Closes: Winning Bidders Announced," public notice, 16 FCC Rcd 4590 (WTB 2001).

<sup>60</sup> Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Second Memorandum

licenses, previously scheduled for January 13, 2003, was postponed.<sup>61</sup>

55. *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.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup> The SBA has approved these small size standards.<sup>66</sup> 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

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).

<sup>61</sup> 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).

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

<sup>63</sup> *Id.* at 1087–88 para. 172.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 1088 para. 173.

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

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.<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup>

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

56. 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.<sup>70</sup>

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

57. 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.<sup>71</sup>

<sup>67</sup> See "Lower 700 MHz Band Auction Closes," public notice, 17 FCC Rcd 17272 (WTB 2002).

<sup>68</sup> See "Lower 700 MHz Band Auction Closes," public notice, 18 FCC Rcd 11873 (WTB 2003).

<sup>69</sup> *Id.*

<sup>70</sup> See Report and Order, *supra*, paras. 28–29.

<sup>71</sup> See 5 U.S.C. 603(c).

58. 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.

59. 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.<sup>72</sup>

60. 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.<sup>73</sup> Some of these commenters have also submitted economic analyses in

<sup>72</sup> Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, Declaratory Ruling, FCC No. 07–30, paras. 11–12 (rel. Mar. 23, 2007) ("Wireless Broadband Internet Access Declaratory Ruling").

<sup>73</sup> 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).

support of their proposals.<sup>74</sup> 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.<sup>75</sup> 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.

61. 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 balance, taking into consideration the concerns raised in the record by certain CMRS carriers<sup>76</sup> 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.

62. 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

<sup>74</sup> 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).

<sup>75</sup> See, e.g., Rosston/Sprint Nextel Comments; Rosston/Sprint Nextel Reply Comments; Hazlett/Cingular Reply Comments; Furchtgott-Roth/T-Mobile Reply Comments.

<sup>76</sup> See, e.g., Cingular Comments at i, 18–30; NDN Comments at 3; Nextel Partners Comments at 5–6.

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.

63. 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.

64. 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.

65. 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

66. 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 Act.<sup>77</sup> 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**.<sup>78</sup>

#### Ordering Clauses

67. 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 CFR 1.425, this Report and Order and *FNPRM is hereby adopted*.

68. *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**.

69. *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*.

70. *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 FNPRM, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

#### Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

#### PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 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 alphabetically to read as follows:

#### § 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

<sup>77</sup> See 5 U.S.C. 801(a)(1)(A).

<sup>78</sup> See 5 U.S.C. 604(b).

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.

[FR Doc. E7-17122 Filed 8-29-07; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 07-3425; MB Docket No. 06-97; RM-11254]

**Radio Broadcasting Services; Dundee and Odessa, NY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; dismissal.

**SUMMARY:** The staff dismisses a counterproposal filed by Bible Broadcasting Network, Inc. to allot Channel 238A to Savona, New York, as a first local aural service. The Media Bureau also modifies its Consolidated Data Base System to reflect Channel 238A at Odessa, New York, as the reserved assignment for Station WFLR-FM in lieu of Channel 238A at Dundee, New York in response to a proposal filed by Finger Lakes Radio Group, Inc., and modifies Station WFLR-FM's license and construction permit accordingly. The reference coordinates for Channel 238A at Odessa, NY, are 42-20-38 NL and 76-53-03 WL. With this action, the proceeding is terminated. See **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Rhodes, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 06-97, adopted July 25, 2007, and released July 27, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445

12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

Finger Lakes Radio Group, Inc.'s proposal was formerly a rule change to Section 73.202(b), the FM Table of Allotments. See 71 FR 30856 (May 31, 2006). As a result of changes to the Commission's processing rules, modifications of FM channels for existing stations are no longer listed in Section 73.202(b) and are instead reflected in the Media Bureau's Consolidated Data Base System (CDBS). See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (December 20, 2006). Nevertheless, a summary of the Report and Order in the instant proceeding is being published in the **Federal Register** because the counterproposal involved a proposed amendment to Section 73.202(b). Although the Report and Order set forth an effective date of September 10, 2007, Station WFLR-FM's license and construction permit will be modified effective 30 days after publication of this summary in the **Federal Register** in compliance with Sections 1.427 and 1.429 of the Commission's rules.

This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the counterproposal was dismissed.)

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E7-17021 Filed 8-29-07; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[CS Docket No. 95-184; MM Docket No. 92-260; FCC 07-111]

**Telecommunications Services Inside Wiring Customer Premises Equipment, Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring**

**AGENCY:** Federal Communications Commission.