



Federal Communications Commission  
Washington, D.C. 20554

June 6, 2008

DA 08-1319

## **Small Entity Compliance Guide**

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

WT Docket No. 05-265

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

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

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

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

**Fax: 202-418-0232**

**[fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)**

## COMPLIANCE REQUIREMENTS

### Objectives of the Proceeding

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

### Important Definitions

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

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

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

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

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

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

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

### **Rules That the Commission Amended**

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

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

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

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

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

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

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

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

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

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

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

### **Recordkeeping and Other Compliance Requirements**

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

## Links

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

[http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/FCC-07-143A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-07-143A1.pdf)

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

[http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DOC-275797A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-275797A1.pdf)

- Added/Revised Part 20 Rules

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

- Accelerated Docket Rules and Procedures

[http://www.access.gpo.gov/nara/cfr/waisidx\\_06/47cfr1\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/47cfr1_06.html)