



Federal Communications Commission
Washington, D.C. 20554

May 19, 2011

DA 11-917

Small Entity Compliance Guide

Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services

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(s). This Guide is not intended to replace the rules and, therefore, 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.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. 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 decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. 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)
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COMPLIANCE REQUIREMENTS

Objectives of the Proceeding

The objective of the proceeding is to promote increased consumer access to nationwide mobile broadband service by adopting a rule that requires facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations as described below. The widespread availability of data roaming arrangements will allow consumers with mobile data plans to remain connected when they travel outside their own provider's network coverage areas by using another provider's network. Adoption of these requirements will promote connectivity and nationwide access to mobile data services such as e-mail and wireless broadband Internet access.

The data roaming requirements will help small providers maintain their ability to compete with national providers by ensuring that subscribers of smaller providers have access to data services when they travel outside of their provider's network coverage. Additionally, the data roaming requirements will help to encourage investment by ensuring that small providers wanting to invest in their networks or expand their coverage into new areas can offer subscribers a competitive level of coverage during the early period of investment and buildout.

Background

In a number of proceedings, the Commission has found that wireless consumers have a reasonable expectation of receiving seamless continuous nationwide commercial mobile telephony services through roaming. For example, the *2007 Report and Order and Further Notice of Proposed Rulemaking* relied partly on such a finding in requiring commercial mobile radio services (CMRS) carriers to provide automatic roaming for mobile telephony services, as well as push-to-talk and text messaging services, upon reasonable request. In the *Further Notice* adopted in 2007, the Commission sought comment on whether it should extend the automatic roaming obligation generally to non-interconnected data services or features, including information services or other non-CMRS services offered by CMRS carriers.

Subsequently, in the *2010 Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, the Commission took further action to increase consumers' access to roaming services by eliminating the "home roaming exclusion" that had been previously adopted as a limitation on the automatic roaming obligation. In particular, the Commission found that the exclusion in many circumstances had discouraged facilities-based competition. Also, in the *2010 Second Further Notice*, the Commission sought to refresh and further develop the record on data roaming by requesting additional comment on whether to extend roaming obligations to mobile data services, including mobile broadband Internet access, that are provided without interconnection to the public switched telephone network.

In April 2011, the Commission adopted a requirement that providers of commercial mobile data services offer data roaming arrangements on commercially reasonable terms and conditions,

subject to certain limitations. The Commission implemented the data roaming obligation pursuant to its legal authority under Title III of the Communications Act, which provides the Commission with authority to manage spectrum and establish and modify license and spectrum usage conditions in the public interest. The duty to offer data roaming arrangements on commercially reasonable terms and conditions is subject to certain limitations, described more fully below in the section entitled Rules That the Commission Amended. Additionally, under the requirement, providers of commercial mobile data roaming services are permitted to negotiate commercially reasonable measures to safeguard quality of service against network congestion that may result from roaming traffic or to prevent harm to their networks. Further, with respect to any data roaming disputes, parties may file a petition for declaratory ruling under Section 1.2 of the Commission's rules or file a formal or informal complaint depending on the circumstances specific to each dispute. Disputes would be resolved on a case-by-case basis taking into consideration the unique facts and circumstances in each instance and parties may be required by Commission staff to provide their best and final offers.

Important Definitions

Commercial Mobile Data Service is any mobile data service that is not interconnected with the public switched network and is: (1) provided for profit; and (2) available to the public or to such classes of eligible users as to be effectively available to the public. Commercial mobile data service includes services provided by Mobile Satellite Services and Ancillary Terrestrial Component providers to the extent the services provided meet this definition.

Rules That the Commission Amended

- The Commission defines commercial mobile data service as any mobile data service that is not interconnected with the public switched network and is: (1) provided for profit; and (2) available to the public or to such classes of eligible users as to be effectively available to the public. It also includes services provided by Mobile Satellite Services and Ancillary Terrestrial Component providers to the extent the services provided meet the definition of commercial mobile data services.
- The Commission requires a facilities-based provider of commercial mobile data services to offer roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to the following limitations: (1) providers may negotiate the terms of their roaming arrangements on an individualized basis; (2) it is reasonable for a provider not to offer a data roaming arrangement to a requesting provider that is not technologically compatible; (3) it is reasonable for a provider not to offer a data roaming arrangement where it is not technically feasible to provide roaming for the particular data service for which roaming is requested and any changes to the host provider's network necessary to accommodate roaming for such data service are not economically reasonable; and (4) it is reasonable for a provider to condition the effectiveness of a roaming arrangement on the requesting provider's provision of mobile data service to its

own subscribers using a generation of wireless technology comparable to the technology on which the requesting provider seeks to roam. (47 C.F.R. § 20.12(e)(1))

- A party alleging a violation of this data roaming requirement may file a formal or informal complaint pursuant to the procedures in §§ 1.716-1.718, 1.720, 1.721, and 1.723-1.735. For purposes of section 20.12(e) as referenced above, references to a “carrier” or “common carrier” in the formal and informal complaint procedures that are extended here, as applicable, will mean a provider of commercial mobile data services.
- Regarding data roaming disputes, the Commission will resolve such disputes on a case-by-case basis, taking into consideration the totality of the circumstances presented in each case. The remedy of damages is not available for data roaming disputes.

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

To the extent that a small entity seeks to enter into a data roaming arrangement under the Commission’s requirements, it:

- Must be a facilities-based provider of commercial mobile data services.
- Must make or receive a request for a data roaming arrangement.
- Has a duty to respond promptly as a would-be host provider (once a request for a data roaming arrangement is made) to the request and avoid actions that unduly delay or stonewall the course of negotiations regarding that request.
- May enter into data roaming arrangements on commercially reasonable terms and conditions, subject to certain limitations. These limitations include the following: (1) providers may negotiate the terms of their roaming arrangements on an individualized basis; (2) it is reasonable for a provider not to offer a data roaming arrangement to a requesting provider that is not technologically compatible; (3) it is reasonable for a provider not to offer a data roaming arrangement where it is not technically feasible to provide roaming for the particular data service for which roaming is requested and any changes to the host provider’s network necessary to accommodate roaming for such data service are not economically reasonable; and (4) it is reasonable for a provider to condition the effectiveness of a data roaming arrangement on the requesting provider’s provision of mobile data service to its own subscribers using a generation of wireless technology comparable to the technology on which the requesting provider seeks to roam.
- May negotiate commercially reasonable measures to safeguard quality of service against network congestion that may result from roaming traffic or to prevent harm to its network.
- May file a petition for declaratory ruling under Section 1.2 of the Commission’s rules in the event of a dispute or file a formal or informal complaint under the rule adopted

depending on the circumstances specific to each dispute. The Commission will resolve such disputes on a case-by-case basis, taking into consideration the totality of the circumstances presented in each case.

Recordkeeping and Other Compliance Requirements

There are no additional reporting or recordkeeping requirements for small entities required by the Commission's data roaming requirements. Parties are not required to file copies of data roaming arrangements with the Commission. There may be some incidental recordkeeping costs incurred to ensure compliance with the data roaming requirements and in the event a dispute arises relating to data roaming arrangements.

Links

- News Release, *FCC Takes Action to Expand Consumers' Access to Mobile Broadband, Spur Competition in the Wireless Marketplace* (rel. April 7, 2011)
http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0407/DOC-305622A1.pdf
- Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Second Report and Order*, 76 FR 26199-26220 (2011).
<http://www.gpo.gov/fdsys/pkg/FR-2011-05-06/pdf/2011-10223.pdf>
- Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 75 FR 22338-22352 (2010), 75 FR 22263-22276 (2010)
<http://edocket.access.gpo.gov/2010/pdf/2010-9832.pdf>
<http://edocket.access.gpo.gov/2010/pdf/2010-9831.pdf>
- News Release, *FCC Takes Steps to Promote Nationwide Mobile Connectivity* (rel. April 21, 2010).
http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297661A1.pdf
- 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

