

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
APPROVING IN PART, CONCURRING IN PART**

*Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143*

Today's item is good news for consumers who want to be able to use their mobile phones as they travel across the United States. On three occasions over the past three decades, the FCC has declined to create an automatic roaming rule. The upshot is that—until today—small, rural wireless carriers have not enjoyed the common carrier protections of Title II when negotiating roaming agreements with other carriers, including large national ones. This is an important dollars and cents issue for consumers. After all, it is consumers who pay the price at the end of the day when their carriers accept inflated roaming rates or cannot reach a roaming agreement at all.

Today's decision affirms for the first time that carriers must deal with each other in good faith and without discrimination when it comes to negotiating roaming for voice service. We also include push-to-talk and text messaging, as well as data services that interconnect with the PSTN. This means Americans will be able to travel with greater confidence that they can place and receive calls while on the road. I appreciate the Chairman's leadership in bringing this pro-consumer item to us.

I concur in part, however, because I believe we should have taken another step forward today. Consumers rely upon their mobile handsets these days for a dizzying array of data services, going well beyond those we cover in today's item. Because the Commission chose—unwisely, in my view—to reclassify data services under Title I rather than Title II of the Communications Act, these services are for the most part *not* included in the protections created by today's Order.

Consider some of the immediate effects of our decision today:

- Roaming consumers will be able to send text messages to their friends' mobile phones—because we conclude today that text messaging is “typically offered” in conjunction with voice service. But these very same consumers have no guarantee that they can send emails to their friends—even though many consumers (including virtually all of us in this room) routinely use mobile devices to send and receive email.
- Roaming consumers will be able to make voice calls to PSTN numbers in the ordinary fashion. But it is not clear that they can rely on a VoIP application they may have downloaded to call PSTN numbers; and they have no guarantee whatsoever of being able to use a peer-to-peer VoIP product that dials IP addresses rather than PSTN numbers.
- Consumers who access the Internet by using their mobile device as a dial-up modem will be able to do so while roaming.<sup>1</sup> But consumers have no guarantee of being able to access the faster speeds offered by *non*-dial-up forms of wireless Internet access. And they have no guarantee of being able to use the many applications on their devices that rely on Internet access, such as browsers, mapping programs, interactive games, and so forth.

These are precisely the type of confusing, consumer-unfriendly results that led me to object to the Commission's reclassification of data services under Title I in the first place. Remember when we used

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<sup>1</sup> See, e.g., J.D. Biersdorfer, “Dial Up the Web with a Cellphone,” *New York Times* (July 12, 2007).

to treat telephones as telephones and the telecommunications that enabled them as telecommunications services? That made for a lot less consumer confusion. Consumers should not have to be amateur engineers or telecom lawyers to figure out which mobile services they can expect to work when they travel. They should be able to assume that their phones will work to the fullest extent that technology permits, wherever they happen to be. And carriers should have the right to negotiate roaming agreements that secure just and reasonable prices for their own consumers.

I do appreciate my colleagues' willingness to address the issue of data roaming in a Further Notice of Proposed Rulemaking. I happen to think that the record we have before us right now is more than sufficient to support imposing an automatic data roaming rule today. Doing that would have provided some much-needed certainty to consumers and businesses alike, channeling technology development in a consumer-friendly way. But I do look forward to considering this issue in the weeks and months ahead, and I hope that we can reach a consensus that consumers should have the same roaming expectations in the future when it comes to data services that they have for voice services starting today.

Finally, my thanks to the Bureau which I know put a lot of hard work into this proceeding.