

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265.*

Today's order is the product of literally years of hard work by countless individuals. In the end, we are writing an important chapter in the FCC's history by making it easier for American consumers to enjoy seamless, nationwide wireless coverage while also preserving incentives for carriers to build out their own facilities resulting in more efficient use of our country's airwaves.

We achieve this accomplishment today unanimously. In so doing, I am reminded of one of the guiding principles espoused by that great telecommunications policy philosopher, Coach Mike Krzyzewski. Coach K often says that, "Two can beat one if they play as one. And five can beat two if they play as one." Today, the five of us are playing as one.

I am voting to support today's decision because it balances a number of other competing interests such as: promoting competition among multiple wireless carriers; encouraging new entry into the wireless market; and providing incentives for all carriers to invest and innovate.

In our August 2007 Order on roaming, which I supported, the Commission ruled that automatic voice roaming is a common carrier service subject to Title II of the Act. At the same time, however, the Commission did not extend that decision to those carriers that were requesting voice roaming in geographic areas where they held spectrum licenses to provide wireless services. In making this exclusion for "home roaming," we reasoned that imposing an automatic roaming obligation in home markets might discourage build-out in these markets, and, therefore, undermine facilities-based competition. We also recognized the importance of roaming and encouraged wireless carriers to continue to negotiate and reach automatic roaming contracts in those home markets.

In the intervening years, through numerous meetings with an array of interested parties, I learned that the great majority of carriers that were seeking regulatory relief here were successfully continuing to strike new roaming deals in the marketplace. On the other hand, I also learned that, in some instances, the home roaming exclusion unintentionally created confusion. Yes, once again a government rule produced an unintended consequence. The rule led some to conclude that a carrier effectively had no right to request roaming in any market where it held spectrum, and the would-be host carrier had no obligation to negotiate roaming arrangements for those markets. Carriers also complained that they had no rights under Title II to seek relief from the Commission for those disputes arising from roaming requests in home markets. As a result, for several years now, interested parties have sought to modify the home market exclusion in a number of cumbersome ways.

The good news today is that we agree on a new course. Specifically, we recognize that the better, simpler path is to eliminate the home market exclusion completely. We also clarify that wireless carriers have statutory rights to complain, even if they seek automatic voice roaming arrangements within a home market. By setting forth factors that the Commission will consider in the event of a complaint, we provide a framework that will provide both sides – the host and the requesting carriers – with greater incentives to succeed in negotiating roaming agreements based on reasonable terms and conditions. We allow market forces to drive flexible deals among market players to give consumers the benefit of seamless, nationwide voice services.

Finally, with respect to the Further Notice on data roaming, for some time now, I have requested that interested parties submit for our consideration a legal analysis setting forth the means to this end. The question is simple: Given that, in 2007, the Commission classified wireless broadband services as

Title I without dissent, is there a legally sustainable path to mandate automatic data roaming? I have sought this analysis well before the D.C. Circuit's recent ruling in the *Comcast* case, which casts even more doubt on our jurisdiction in this area. I strongly encourage all commenters to give us their analyses of how the *Comcast* decision affects our ability to regulate data roaming.

I thank Chairman Genachowski for providing another opportunity for comment on this important issue. I look forward to learning more. In the meantime, I will continue to strongly encourage parties to continue to enter into roaming deals, including those that include data. As the Further Notice states, "in the two years since our 2007 Further Notice on data roaming, the wireless broadband industry has experienced a rapid evolution, with significant economic, technological, and regulatory developments, including developments in network and device technologies, spectrum use and availability, market participants, network deployments, and consumer demand and usage patterns." I highlight these positives to point out that they have occurred even *without* an FCC mandate for automatic data roaming.

I further thank the Chairman for bringing this matter forward immediately after completion of the Broadband Plan, and for handling this complicated issue in a comprehensive manner, as part of the broader roaming docket. I also thank Ruth Milkman and the dedicated team in the Wireless Bureau for your outstanding work in this area.