STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

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

Roaming obligations have helped fuel competition, investment and consumer choice in America's wireless marketplace since the first cellular voice service in 1981. Today, we take a vital step to update this framework for the 21st century, as Americans increasingly use their mobile devices for data as well as voice.

The framework we adopt today will spur investment in mobile broadband and promote competition. It will ensure that rural and urban consumers have the ability they expect to use their mobile phones throughout the nation for voice calls or data—like email or mobile apps.

The rules we adopt today build on the Commission's longstanding and bipartisan voice roaming rules. As noted, the Commission first adopted roaming requirements in 1981 as part of the original cellular service rules. In 1996, the Commission extended these rules to the newly established Personal Communications Services and to certain Specialized Mobile Radio carriers. In 2007, under Republican Chairman Kevin Martin, the Commission unanimously clarified that carriers were required to provide "automatic" voice roaming. And last year, this Commission voted unanimously to increase consumers' access to roaming services by eliminating the so-called "home roaming exclusion."

And the record on voice roaming is one of unbridled success. Today, there are more than 300 million mobile voice subscribers and virtually every consumer has access to nationwide voice services and roaming.

And so I am pleased that Congressional members of both parties – as well as an overwhelming percentage of businesses in the industry -- have supported the simple, logical step of extending the basic roaming framework to mobile broadband.

Stemming from our focus on facts, data and the realities of technology and the marketplace, we today adopt an even lighter touch approach to reflect the swiftly evolving reality of today's data market. This approach has benefitted from input from all of my colleagues, including my colleagues who have decided not to support the item.

By adopting a "commercially reasonable" standard for data roaming offers, we give carriers flexibility to tailor agreements to different environments and to account for concerns regarding congestion and technical compatibility. We've also refined enforcement of the rules with an innovative process designed to drive deals in the market place and minimize the need for Commission involvement.

The Commission has the option of invoking a process similar to "baseball" style arbitration that should provide further incentive for the parties to reach agreement before ever filing a complaint with the Commission. And we have avoided, as we did unanimously in the voice roaming context, regulating rates for data roaming agreements, instead leaving it to the parties to set their terms.

Notwithstanding the enormous success of our voice roaming rules and the powerful logic of updating those rules to reflect advances in technology, some have objected that today's Order

is unnecessary and may inhibit investment. The record is clearly to the contrary on both points.

First, the record demonstrates that there is, in fact, a significant problem. The evidence shows that mobile providers must be able to offer nationwide voice and data plans to have any chance of competing in today's market. Consumers have come to expect the ability to roam nationwide, and they demand it for all of their basic mobile services, whether it's a voice call, an email, an online check of out-of-town scores, or access to web job postings or health information while on the road.

Yet the record evidence supplied by carriers in the market shows that roaming deals simply are not being widely offered on commercially reasonable terms. On the contrary, the record makes clear that some providers have refused to negotiate 3G or 4G data roaming agreements, have created long delays, or have taken other steps to impede competition.

A broad coalition of rural carriers informed us that their attempts to enter into data roaming negotiations with nationwide providers are "many times rejected out of hand." One company reported that "even our requests for an assurance to negotiate at some point in the future have been refused." In short, in the absence of the basic framework that we have on the books for voice roaming, too many competitive carriers have been unable to get deals done.

As for the issue of investment, the record demonstrates that data roaming guarantees will help unleash significant broadband investment, especially in rural areas. Today, smaller and rural providers have said they can't raise the money to build out networks—or if they have the capital, can't make the economic case to move forward without certainty and predictability around roaming. One company told us that it has sidelined "several hundred million dollars in capital expenditures, new jobs, investments in intellectual property, and other economic activity" because in order to enter the wireless market, it needs the assurance of reasonable access to data roaming.

New investment in broadband will increase competition, accelerate broadband build out, and benefit both consumers and the nation's global competitiveness. In contrast, the absence of data roaming guarantees will limit our broadband future by eliminating choices, especially in rural areas, or in some cases delaying or preventing access to mobile broadband at all.

Indeed, every commenter that filed in this record, other than the two largest nationwide incumbents, asked the Commission to adopt data roaming rules. From both a policy and legal perspective, standing idle in the face of this record would amount to shirking our responsibility.

It's untenable to argue that the Commission lacks the authority to adopt data roaming rules—specifically that our framework amounts to "common carriage" prohibited by the statute. This argument is flat wrong: the framework we adopt leaves mobile service providers free to negotiate and determine, on an individualized case-by-case basis, the commercially reasonable terms of data roaming agreements. Under the law, this is the very opposite of common carriage.

Very often when we act here at the Commission, someone says we've exceeded our authority. But the truth is that these claims of overreaching are themselves an overreach. During the last four years, the federal courts have issued 16 published merits decisions addressing direct statutory challenges to FCC orders. The FCC prevailed in 15 of the 16 challenges—94% of the time. I am confident that the same result will pertain here, if this order is challenged.

The notion that sometimes – to promote competition and broadband deployment – the

Commission must adopt sensible, light-touch rules to enable access to infrastructure is a familiar one. The Commission has done so not only earlier this year and in past years with voice roaming, it did so earlier today with pole attachments. This is why both of these initiatives have bipartisan Congressional support. Broadband data roaming rules for rural and other competitive carriers are no less worthy of unanimous support than pole attachment rules for incumbent and competitive carriers.

Together, these actions on pole attachments and data roaming – both recommendations of the National Broadband Plan – mark a significant step to promote a vibrant and innovative broadband future, massive private investment, and our global competiveness.

We know that a vigorous and dynamic mobile data market is vital if America is to remain a global technology leader. Healthy competition is what drives greater innovation and investment, lower prices, and better service. So I am pleased that we are moving forward with this basic competition and consumer-protecting measure for America's mobile broadband future.

I thank the Bureaus and Offices, particularly the Wireless Telecommunications Bureau, the Office of Strategic Planning and Policy Analysis and the Office of the General Counsel, for their work on this order.