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FCC Mandates Automatic Roaming By CMRS Carriers

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Smaller CMRS carriers were able to breathe a sigh of relief this summer when the FCC at long last concluded that roaming is indeed a common carrier service. As we have noted several times in recent issues, the status of roaming has been in regulatory limbo for two decades, and it was therefore unclear whether a small carrier could charge a larger carrier with a violation of the Communications Act if the larger carrier failed to offer automatic roaming at reasonable and non-discriminatory rates. After mulling over the issue for about eight years, the FCC finally responded to complaints from small and regional carriers that they were getting the back of the hand from the majors when they asked for automatic roaming agreements. Because the majors now have such large nationwide footprints of their own, they have had little incentive to reach roaming agreements with small carriers who may be their competitors in some markets. By ruling that roaming is a common carrier offering, the FCC brought this service squarely within the ancient obligation familiar to common carriers of a certain age: rates must be just, reasonable and non-discriminatory.

That and 25 cents (or a buck fifty at Starbucks) will get you a cup of coffee. The obligation to provide automatic roaming now will get you in the door with a big carrier, but the FCC declined to provide any guidance on the rates that can be charged once you're in there. It refused to require roaming rates to be disclosed, so it may be tough to tell whether the rate you are being offered is worse than the rate being offered to your similarly situated but more favored neighbor. In the Golden Age of rate regulation, rates had to be filed in things called tariffs, so everybody knew what rates were being offered. A complaining carrier not only has to show that he was offered a discriminatory rate, but he must also show that the discriminatory rate is not based on some reasonable distinction. Having spent a brief period of my life dreaming up reasonable distinctions to justify rate differentials, I can tell you that it's not that hard. So we shall see whether, having won the war, the small carriers will win the little skirmishes to secure the benefit that the war was all about.

Left open was the question of whether the FCC should apply the automatic roaming obligation to data. Although the FCC did extend the mandate to SMS and push-to-talk services, it otherwise limited the new rule to two-way switched voice or data services connected with the public switched network. There had been some thought that data and broadband applications should also be covered, but since these are deemed “information services,” the FCC chose not to extend the rule that far at this time. However, as mobile broadband becomes more and more a part of the typical mobile communications package, customers will expect to be able to roam with their computers or computer-like devices. The FCC therefore sought comments (due October 29) on whether the roaming mandate should cover these applications as well, and, if so, on what basis. The latter point is of more than passing conceptual interest since information services do not fall under the “just, reasonable and non-discriminatory” regime applicable to common carriage, so what metric would one use to find a rate charged for such a service unlawful? We shall see.