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April 4, 2006

EX PARTE NOTICE

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

T-Mobile USA, Inc. ("T-Mobile") takes this opportunity to address various universal service fund ("USF") contribution methodology issues that have been raised by Commission staff, specifically, T-Mobile's views as to how a numbers- and capacity-based contribution methodology should be applied to wireless services. Although T-Mobile in the past supported a revenue-based contribution methodology, it now acknowledges that a properly structured numbers- and capacity-based approach will achieve the Commission's universal service goals.

Introduction: T-Mobile Supports A Properly Structured Numbers- And Capacity-Based USF Contribution Methodology.

By capturing all services using working telephone numbers and other connections used to provide interstate telecommunications, a numbers- and capacity-based system will help maintain the stability and viability of the USF and ensure that all providers of interstate telecommunications contribute on an equitable, nondiscriminatory and technologically neutral basis. Importantly, no consumer group will be unfairly advantaged or disadvantaged under the new contribution methodology.

To accomplish these objectives, however, the new contribution methodology must be structured in a nondiscriminatory and technologically neutral manner. USF contributions, whether assessed on a revenue or telephone number basis, should have a minimal impact on carrier and consumer behavior. Thus, just as capacity-based assessments for non-switched wireline connections should be properly graduated to discourage arbitrage opportunities, numbers-based USF contributions by wireless providers should be technology neutral and equitably structured to

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avoid market distortions that could place an unfair burden on wireless consumers. In the case of wireless family share plans, USF contribution assessments should recognize that the family is an economic unit sharing one "bucket" of minutes and that each family member will need a mobile phone, with its own number, to replace the single wireline number formerly used by the entire family. The imposition of USF contributions should not influence the market decisions of potential users of wireless family plans or of wireless prepaid cards, which cannot be assessed a monthly fee.[1]

A properly framed numbers- and capacity-based contribution methodology also will require all providers of interstate telecommunications to contribute to the universal service program. In order to ensure the widest possible contribution base, assessments should be imposed on all cable modem, DSL and other broadband providers, IP-enabled services provided by carriers, prepaid calling card providers and non-carriers selling excess capacity on their networks for telecommunications services. T-Mobile also urges the Commission to take steps to restrict the future growth of the USF. The expansion of the high-cost universal service program, combined with the decreasing contribution base, is approaching the point where the contribution burden is becoming the most significant threat to universal service. In order to ensure that the universal service program is not self-defeating, the Commission should merge all of the high-cost universal service support programs into a single, unified, forward-looking, least-cost technology support program and freeze support at current levels.

Response to Commission Inquiries: A Number-Based USF Fee Should Be Adjusted For Wireless Family Share Plans and Prepaid Wireless Services.

The staff requested that T-Mobile elaborate on its wireless customer mix. T-Mobile competes strongly for the postpaid residential consumer.[2] As the fourth largest national carrier in a highly competitive wireless marketplace, T-Mobile distinguishes itself as a carrier that delivers superior customer service. It has won three consecutive J.D. Power and Associates awards for providing the highest level of customer service in the mobile telephone industry.

About 86 percent of T-Mobile's customer base is postpaid and billed on a monthly basis, while about 14 percent of its customers are prepaid. Of the postpaid customers, one of the fastest growing segments consists of family share plans. T-Mobile's family plans give customers the ability to add a limited number of lines that share in a defined bucket of minutes. For example, one plan allows a shared bucket of 1000 minutes priced at $70 per month for the first two lines, with a fee for each additional line up to a maximum of five lines. Another add a line plan offers

[1] "Prepaid" service requires customers to pay for a fixed amount of minutes prior to making any calls.

[2] Most mobile telephone subscribers have "postpaid" service, which means that they pay their phone bills after they have incurred charges.

a shared bucket of 3000 minutes for $130 per month for two lines, also with a fee for each additional line up to a maximum of five lines.

Under the current USF contribution methodology, the derived universal service fee in the second quarter for a customer with a popular family plan with five lines will be $1.86 per month (this value is derived from a calculation that applies the USF factor for the second quarter of 10.9 percent to T-Mobile's effective interstate rate). Under the proposed numbers-based plan, at a monthly rate of $1 per line, the universal service fee for that plan would jump to $5 per month, almost three times as much as the revenue-based charge. Even with the adjustment reducing the fee by 50 percent for all lines after the first line, proposed by CTIA-The Wireless Association™ ("CTIA"), Verizon and T-Mobile, the fee would still be $3 per month, over one and one-half times the revenue-based amount.

Commission staff has suggested that an even higher numbers-based fee might be under consideration for wireless carriers, perhaps as high as $1.30 or $1.40 per month. A fee in that range might be derived by applying the second quarter USF factor of 10.9 percent to the wireless safe harbor of 28.5 percent and multiplying the result by the wireless industry's monthly average revenue per user ("ARPU"). Applying that formula to T-Mobile's blended ARPU of $43.35 would yield a monthly fee of $1.35. If the industry ARPU were higher, the fee would be higher, perhaps as high as $1.40. Even at $1.35 per line, the universal service fee for the T-Mobile family plan with five lines in the above example would jump to $6.75, over 3.8 times the revenue-based charge, and to $4.05 with the 50 percent adjustment after the first line, well over twice as much.

Given these tremendous increases resulting from the range of numbers-based USF fees under consideration, the Commission should apply the proposed adjustment to wireless family share plans. Specifically, the adjustment should apply to all numbers used with a family share plan except for the first line, irrespective of the designation for each number that might be used by the carrier for this service. The proposed adjustment will lessen the disparity in USF contribution burdens borne by one type of wireless customer account -- the family share plan -- and the single wireline number that it typically replaces.

The prepaid card segment of T-Mobile's customer base poses similar issues. Because prepaid card holders do not pay monthly bills, T-Mobile cannot directly charge a standard monthly universal service fee. Instead, the fee must be included in the price at which the cards are sold to customers. Based on the typical monthly revenue from a prepaid card holder, T-Mobile currently attributes about $0.42 in universal service fees to each prepaid service line. Unless an adjusted rate is assessed, as CTIA, Verizon and T-Mobile propose, the universal service fee for each card under a numbers-based system will jump to $1, more than twice as much. The new fee would represent more than 4.3 percent of the gross revenue from each prepaid customer.

As these examples demonstrate, the customers potentially most adversely affected by a numbers-based contribution methodology are families and low income consumers. Disproportionately large fee increases on families and low income consumers are inequitable and likely to dampen demand for these services. In order to ensure that a change to a number-based and capacity-based contribution methodology does not disproportionately burden wireless consumers and influence their economic choices, the Commission should implement the adjustments proposed by CTIA, T-Mobile and Verizon, just as the capacity tiers proposed in the *Second Further Notice* are calibrated to discourage arbitrage and other potentially distorting effects of a capacity-based system for non-switched connections.[3] Unlike proposals to retain a revenue-based approach for certain service categories,[4] these adjustments would not contradict a numbers-based approach, nor are they designed to guarantee that certain types of services will experience no change at all in their USF contribution obligations.[5]

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[3] *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24989-91 (2002) ("*Second Further Notice*"). Some parties oppose the requested wireless adjustments on the grounds that they "are inconsistent with a numbers-based methodology which is technology neutral" (*see* Qwest Universal Service Contribution Methodology at 8 (Mar. 21, 2006) ("Qwest Ex Parte"), attached to letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (Mar. 21, 2006)), discriminatory, in violation of Section 254(d) of the Communications Act (*see* NTCA USF Contribution Methodology at 4 (Mar. 15, 2006) ("NTCA Ex Parte"), attached to letter from Daniel Mitchell, Vice President, Legal and Industry, NTCA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 80-286, *et al.* (Mar. 16, 2006) ("Mitchell Letter")), or may benefit some high-volume, high-income users (*see* Ad Hoc Telecommunications Users Committee Ex Parte Presentation at 2 ("Ad Hoc Ex Parte"), attached to letter from James S. Blaszak, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (Mar. 9, 2006)).

Like the capacity tiers recommended by the staff, the requested wireless adjustments are necessary to prevent discrimination and arbitrage behavior and similarly are entirely consistent with a numbers-based approach. Ad Hoc's and Qwest's opposition to the adjustments is consistent with their opposition to capacity tiers as imposing "excessive" obligations on high-volume connections. Ad Hoc Ex Parte at 1-2; Qwest Ex Parte at 8. Their approach would offload the equitable portion of the USF contribution burden otherwise borne by large business customers onto residential customers using wireless family plans and low-volume prepaid wireless services. Moreover, unlike wireline residential plans, a family sharing a single bucket of minutes among different wireless lines is effectively a single customer account.

[4] *See, e.g.*, Business Network Services section of Ex Parte Presentation of the United States Telecom Association on Universal Service Contribution Methodology (Jan. 10, 2006), attached to letter from Robin E. Tuttle, Counsel, US Telecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (Jan. 11, 2006) (non-circuit-switched services could contribute based on capacity tiers "or interstate revenues (at the choice of the carrier)"); Universal Service Contributions: Presentation by OnStar Corporation at 8 (Feb. 8, 2006), attached to letter from David L. Sieradzki to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (Feb. 8, 2006) ("prepaid wireless services like OnStar's should pay revenue-based contribution").

[5] *See, e.g.*, letter from Mitchell F. Brecher, Counsel for TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 5 (Jan. 31, 2006) (contribution levels under a numbers-based methodology should be capped at current levels); Cox Communications, Inc. Universal Service Contribution Methodology, attached to letter

There is also no need to distinguish between residential and business users of wireless services. Customers routinely mix personal and business use of their wireless services, and it would make little sense for the Commission to draw any distinctions between them. Properly graduated capacity tiers will guard against any possible abuses of family share plans by large organizations.

If the Commission ultimately chooses a numbers- and capacity-based contribution methodology, it must articulate the jurisdictional basis for this approach. Section 254(d) of the Communications Act ("the Act"), which requires "[e]very telecommunications carrier that provides interstate telecommunications services" to contribute "on an equitable and nondiscriminatory basis" to the USF, and states that "[a]ny other provider of interstate telecommunications may be required to contribute … if the public interest so requires" provides the strongest jurisdictional basis for a new methodology.[6]

Moreover, Section 2(b) of the Act, which precludes Commission jurisdiction over intrastate services, is not an obstacle to a numbers- and capacity-based contribution methodology.[7] In *NARUC v. FCC*, the D.C. Circuit upheld the interstate subscriber line charge ("SLC") against a Section 2(b) challenge that subscriber lines are also used for intrastate calls.[8] The D.C. Circuit held that, because connections to the public telephone network are used for interstate services as well, Section 2(b) does not bar federal assessments on those connections to recover the interstate portion of loop costs.[9] For purposes of a Section 2(b) analysis, there is no difference between the SLC and a USF contribution obligation imposed under Section 254(d) on all working numbers and end-user connections used for "interstate telecommunications." The amount of actual

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from J.G. Harrington, Counsel, Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (Dec. 13, 2005) (Commission "should ensure that consumer services do not contribute more than their current share of the universal service fund").

NTCA alleges that CTIA's approach will shift the burden of USF contributions disproportionately to wireline carriers. NTCA Ex Parte at 4. *See also* NTCA Universal Service Contribution Methodology Ex Parte Presentation at 9-12 (Corrected Mar. 16, 2006) ("NTCA Presentation"), attached to NTCA Letter (slides showing supposed relative burdens of USF on various industry segments under CTIA methodology). NTCA's analysis is flawed, however, because it does not take into account the 800 numbers and interstate private line and special access services provided by long distance carriers under a numbers- and connections-based methodology and overestimates the proportion of wireless services receiving the proposed adjustments. Based on T-Mobile's experience, only about one-third of all of its customers would qualify for the proposed adjustments, which is significantly less than the 50 to 75 percent estimated by NTCA. *See* NTCA Presentation at 10-12.

[6] 47 U.S.C. § 254(d).

[7] *Id.* § 152(b).

[8] *National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985) ("*NARUC v. FCC*").

[9] *Id.* at 1113-14.

interstate usage was not dispositive in *NARUC v. FCC* and is not relevant to the Commission's authority to implement a contribution methodology based on numbers or connections.[10]

In accordance with Section 1.1206 of the Commission's rules, this letter is filed with your office for inclusion in the public record of the above referenced proceeding. If you have any questions regarding this *ex parte* notice, please contact the undersigned.

Sincerely,

/s/ Thomas J. Sugrue

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Vice President, Government Affairs
T-Mobile U.S.A., Inc.

cc: Ian Dillner
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[10] The irrelevance of the amount of interstate or intrastate usage or revenues to a numbers- and capacity-based system also distinguishes *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 447-48 (5th Cir. 1999), which struck down the Commission's attempt to base USF contributions partly on the amount of intrastate revenues.