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June 6, 2006

EX PARTE NOTICE

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

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

Thomas J. Sugrue, Vice President, Government Affairs, for T-Mobile USA, Inc. ("T-Mobile"), Kathleen O'Brien Ham, Managing Director, Federal Regulatory Affairs, for T-Mobile, and the undersigned, also representing T-Mobile, met on June 6, 2006 with Scott Deutchman and Bruce Gottlieb, Legal Advisors to Commissioner Michael J. Copps, to discuss universal service fund contribution methodology issues pending in the above-referenced proceeding. T-Mobile supports the goals of the universal service program and recognizes that wide-ranging reform must be undertaken to sustain the fund in the long term. If the Commission is not prepared to adopt significant reform of its universal service contribution methodology at this time, however, it is critical that the Commission ensure that the contribution base is maintained pending comprehensive reform.

T-Mobile suggested that expanding the contribution base on a temporary basis is only a second best solution, at most, to resolving the issues presented by the impending expiration of the 270-day period established in the *Wireline Broadband Order* during which facilities based wireline broadband Internet access providers must continue to contribute to existing universal service

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support mechanism.¹ Transitional changes to universal service contribution mechanisms that are not fully supported in the existing record in this proceeding likely will create legal, administrative and policy problems and impede progress on comprehensive reform efforts.

Nonetheless, T-Mobile has no fundamental objection to an interim increase in the wireless safe harbor threshold as long as wireless carriers continue to be allowed to base their universal service contributions on their actual interstate revenues as determined by traffic studies. Any Commission rule that would prevent wireless carriers from reporting actual revenues based on traffic studies would upset eight years of Commission precedent and would contradict the Section 254(d) statutory requirement that contributions be made “on an equitable and nondiscriminatory basis.”²

Moreover, as is now the case, carriers should be allowed to base their interstate revenues on any reliable traffic analysis methodology, and Commission pre-approval of a carrier’s methodology should not be required. T-Mobile’s traffic studies are conducted monthly and are based on a robust sampling technique using tens of millions of call records. T-Mobile’s consistent results -- showing an interstate revenue percentage below the safe harbor threshold -- confirm the reliability of those studies. As Verizon Wireless noted, the TNS Telecoms study commissioned by TracFone purporting to show otherwise is seriously flawed in several respects, including: (1) its use of a small sample of just 8,000 residential customers for the entire industry, only some of which were wireless customers; (2) its failure to describe the sampling techniques used and the geographic breakdown of the sample; (3) its use of outgoing calls only; and (4) its use of the originating NPA, rather than originating cell site, to determine the origination point of a call.³

T-Mobile also noted that it has no objection to the interim establishment of a safe harbor threshold for voice over Internet Protocol (“VoIP”) services, as long as service providers are free to use reliable traffic studies to measure their actual interstate VoIP revenues without pre-approval of their methodologies. New rules requiring VoIP providers to use the Commission’s safe harbor percentage instead of traffic studies or mandating pre-approval of the methodology used for interstate VoIP traffic studies would be particularly unsound given the absence of any record support for a specific VoIP safe harbor threshold. These views apply especially to

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, 14915-16 (2005), petitions for review pending, *Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir., filed Oct. 26, 2005) (“*Wireline Broadband Order*”). The *Wireline Broadband Order* became effective on November 16, 2005, with the end of the 270-day period falling on August 13, 2006, which is a Sunday. *Id.* at 14916; 70 Fed. Reg. 60222 (Oct. 17, 2005).

² 47 U.S.C. § 254(d).

³ Letter from John T. Scott, III, Vice President & Deputy General Counsel, Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2-3 (June 2, 2006).

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emerging hybrid wireless/VoIP services. Calls using these hybrid services might make use of both unlicensed broadband spectrum and licensed cellular spectrum as the user passes in and out of WiFi “hotspots,” and it is unclear how the wireless and VoIP safe harbor thresholds would be applied to such calls. Thus, providers of these services should be able to use reliable methodologies to determine interstate traffic rather than to rely on safe harbors.

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/ Cheryl A. Tritt
Cheryl A. Tritt
Counsel to T-Mobile USA, Inc.

Attachment

cc: Scott Deutchman
Bruce Gottlieb
Thomas Sugrue
Kathleen Ham