April 5, 2007

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

Re: Notice of *Ex Parte* Communication
WC Docket No. 05-337

Dear Ms. Dortch:

On Wednesday, April 4, 2007, CTIA - The Wireless Association® ("CTIA") met with Commissioner Ray Baum of the Oregon Public Utility Commission, a member of the Federal-State Joint Board on Universal Service ("Joint Board") as well as Michael Weirich and Cynthia Van Landuyt, advisors to Commissioner Baum. CTIA was represented by Steve Largent, President and CEO, K. Dane Snowden, Vice President, External and State Affairs, and Paul Garnett, Assistant Vice President, Regulatory Affairs. During the meeting, CTIA expressed its strong opposition to a platform-specific or wireless-only "cap" on the distribution of high-cost federal universal service funding. CTIA urges the Joint Board to redouble its efforts to implement long term, market- and consumer-oriented universal service reforms.

CTIA has been a strong and consistent supporter of real and significant reform to the universal service fund ("USF"). Throughout the course of this proceeding and others, CTIA has proposed a number of technologically neutral means by which the Joint Board and the Commission could curb Fund growth and expand the contribution base. In particular, CTIA has advocated: (1) Further disaggregation and targeting of support within each study area at least to the wire center level, to ensure that support is available only in the areas where it is truly needed; (2) The use of competitively neutral reverse auctions to establish market-based support levels in high-cost service areas; (3) The expanded use of forward-looking cost rather than embedded cost, particularly for larger rural incumbent LECs, to determine efficient support levels and reduce the size of the Fund; and (4) A shift to a telephone-numbers-based contribution mechanism to preserve or expand the contribution base as communications migrate to alternative networks not contemplated by the current revenues-based regime.

In advancing these reform proposals, CTIA has worked to foster compromise and cooperation, recognizing the value of industry consensus even when that consensus results in a policy that would not necessarily represent its "first choice." Importantly, CTIA has only put forth proposals that can be defended from a legal, policy, and economic perspective. CTIA cannot support any proposal that would result in a technology-specific or wireless-only "cap" on USF disbursements. This result would fly in the face of consumer preferences, marketplace realities, and statutory requirements. As Senator John D. Rockefeller and four of his Senate colleagues recently explained in a letter to Commissioner Tate, Chair of the Joint Board, and

Commissioner Baum, such a cap would "limit[] rural consumers' options" and would not "achieve the goal of strengthening the program for the long-term."[1]

First, a wireless-only cap would repudiate consumers' clear preference for wireless services, and deny rural consumers the competition and capabilities that such offerings have brought to end users in more populous markets. The Telecommunications Act of 1996 ("1996 Act") sought to encourage competition in the telecommunications marketplace,[2] and explicitly contemplated the designation of more than one eligible telecommunications carrier ("ETC") in each service area.[3] Predictably, given the pro-competitive goals laid out in the 1996 Act, competitive wireless carriers have begun to draw support from the Fund as they deploy infrastructure and win customers in truly rural and high-cost areas. In addition to forcing incumbent wireline providers to compete on the basis of price and service quality, this new wireless infrastructure is giving rural consumers the value of mobility, broadband and other unique advantages that urban consumers already enjoy. These consumers do not take the arrival of wireless services lightly: Yesterday, Mayor Sue Thomas of Pleasant Hill, Louisiana reported that her town, population 782, held a parade the day wireless service arrived.[4] That wireless service was made possible with high-cost universal service support.

Throughout the country, the marketplace has evolved as well. Wireless is no longer a "supplemental" or "discretionary" service. Today:

- There are 26% more wireless handsets in service than wireline connections.[5]
- About 11% of households have abandoned wireline service altogether and subscribe only to wireless service.[6]
- A majority of consumers currently using wireline service consider their wireless phone their "primary" connection – if forced to choose one or the other, they say they would keep their wireless phone and give up their wireline connection.[7]

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[1] Letter from Sens. John D. Rockefeller, Mark Pryor, Byron L. Dorgan, Amy Klobuchar, and Gordon H. Smith to Hon. Deborah Taylor Tate and Commissioner Ray Baum (March 21, 2007) *("Senate Letter").*

[2] *See, e.g., Alenco Communications, Inc. v. FCC,* 201 F.3d 608, 615 (5th Cir. 2000) ("Alongside the universal service mandate is the directive that local telephone markets be opened to competition…. The FCC must see to it that *both* universal service and local competition are realized").

[3] 47 U.S.C. § 214(e).

[4] *See* Paul Kirby, *Wireless Officials Complain About Inequitable Treatment in USF Program*, TR DAILY, March 28, 2007.

[5] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2006* (2007), at Tbl. 1 (showing 172,031,909 combined incumbent and competitive LEC lines) and Tbl. 14 (showing 217,418,404 mobile wireless connections).

[6] *See Wireless Substitution: Preliminary Data from the January-June 2006 Health Interview Study*, National Center for Health Statistics, Centers for Disease Control, *available at* http://www.cdc.gov/nchs/products/pubs/pubd/hestats/wireless2006/wireless2006.htm (last accessed Mar. 29, 2007).

- Mobile wireless carriers are connecting their customers to broadband faster than any other group of providers, by a wide margin, and wireless "lines" now account for fully half as many broadband connections as DSL.[8]

In short, wireless providers have brought tremendous benefits to consumers, and USF support promises to play a critical role in helping them to extend those benefits to consumers in high-cost areas.

In light of the above, the Joint Board and the Commission must reject calls for a platform-specific "cap" that would freeze USF distributions to wireless carriers. A wireless-only cap would artificially limit funding to precisely those networks and services in which consumers have expressed the greatest interest, and which are most in need of support. By separately capping the total amount of support that is available for wireless ETCs in each study area, the Commission would effectively ensure unreasonably low levels or no support for wireless carriers in many study areas. CTIA estimates that there are 528 study areas around the country where no wireless ETC has been designated. Of that number, wireless ETC petitions are pending in 29 study areas. Because no wireless ETCs are currently drawing support in these study areas, if a wireless-only cap were enacted today, the wireless support level would be set at zero in those areas for the duration of the cap's effectiveness.

But as the courts have held, "[t]he FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other."[9] Even in very high-cost areas, competition between and among carriers will force providers to improve the quality of the services they receive; carriers unable to compete on the basis of price will compete on the basis of non-price factors. A cap on support that affects only wireless carriers would blithely sacrifice this competition for rural consumers by providing an unfair financial advantage to wireline providers. This outcome would be particularly egregious given consumers' support for increasing the proportion of USF funds allocated to wireless services. In a recent consumer poll commissioned by MyWireless.org®,[10] 70% of consumers said they support using a *greater* portion of the universal service fund to help wireless carriers improve wireless service in rural areas. Only 14% of consumers said they oppose such a proposal.[11]

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[7] On March 6-8, 2007, MyWireless.org® commissioned a national survey of 1,000 adult wireless phone users who also have wireline phones and who are likely voters ("MyWireless.org National Consumer Survey"). All interviews were conducted by professional interviewers via telephone. Interview selection was at random within predetermined geographic units. The accuracy of the sample is within 3.1% at a 95% confidence interval. The precise question asked was: "If you could keep one service, would you keep your cell phone service or your home landline phone service?"

[8] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau , *High-Speed Services for Internet Access: Status as of June 30, 2006* (January 2007), at 5, Tbl. 1.

[9] *Alenco Communications Inc. v. FCC*, 201 F.3d 608, 614 (5th Cir. 2000) (emphasis in original).

[10] MyWireless.org National Consumer Survey, *supra* note 7.

[11] The question posed was: "You are currently charged about $1 a month for a 'universal service' fee on landline phone bills and cell phone bills in part to enable telecom carriers to provide service in rural and other high-cost

Second, a wireless-specific cap also would violate the principle of technological neutrality.[12] This principle requires that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[13]

Technological neutrality enjoys nearly universal support as a bedrock regulatory principle. Senator Stevens' proposed universal service legislation would codify the requirement that "[u]niversal service support mechanisms and rules should be competitively neutral" – *i.e.*, that such rules must "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[14] Moreover, Senator Rockefeller and his colleagues urged the Board to "seriously consider competitively-neutral proposals" as it works to reform the universal service system.[15] This commitment is shared at the Commission. Commissioner Tate has expressed her goal of "work[ing] to create and maintain a regulatory landscape that is fair and technology neutral"[16] and of placing competing services "on a level playing field."[17] FCC Chairman and Joint Board member Kevin J. Martin has stated that "all providers of the same service must be treated in a similar manner *regardless of the technology that they employ*," and "[r]egulation must not have the effect, unintended or otherwise, of favoring the adoption of certain technologies over others."[18] FCC Commissioner

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areas. About 75% of the funds currently go toward providing landline phone services. Would you support or oppose using a greater portion of universal service funding to help cell phone companies improve the quality of cell phone service in rural and high-cost areas?"

[12] *Universal Service First Report and Order*, 12 FCC Rcd at 8801 ¶ 47.

[13] *Id.*

[14] *See* S.101, A Bill To Update and Reinvigorate Universal Service Provided Under the Communications Act of 1934 at § 203.

[15] *See Senate Letter*.

[16] "A Rewrite for the 21st Century," Tennessee Telecommunications Association; Commissioner Deborah Taylor Tate, 2006 FCC LEXIS 2156 (May 2, 2006). Commissioner Tate also praised the Commission's *2006 Contribution Order* on the ground that it would "ensur[e] that services are treated in a technology-neutral manner under the Commission's contribution rules." *Universal Service Contribution Methodology* et al., 21 FCC Rcd 7518, Statement of Commissioner Deborah Taylor Tate (2006) *("2006 USF Contribution Order")*.

[17] *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, Statement of Commissioner Deborah Taylor Tate.

[18] Remarks of FCC Chairman Kevin J. Martin, TELECOM 05 Conference, United States Telecom Association, Las Vegas, NV; Delivered via Satellite from Washington, DC, 2005 FCC LEXIS 5797 (October 26, 2005) (emphasis added). *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Statement of Chairman Kevin J. Martin at 1 (rel. March 23, 2007) *("Wireless Broadband Order")*; Remarks by Commissioner Kevin J. Martin Federal Communications Commission to the Santa Fe Conference of the Center for Public Utilities Advisory Council, Santa Fe, New Mexico, 2003 FCC LEXIS 1797 (March 18, 2003)

and Joint Board member Michael Copps, too, has emphasized that "[t]he role of government" in an age of intermodal competition "is not to pick winners and losers," because "[g]overnment is poorly equipped for that job."[19]

A wireless-only cap, however, would do just that, providing about 75% of high-cost support to mature wireline networks experiencing little subscriber growth while limiting wireless networks of necessary funding just as they are expanding into hard-to-serve high-cost areas and thereby selecting winners (wireline incumbents) and losers (wireless providers).

Third, a wireless-only cap would undermine the national goal of improving broadband deployment in the United States.[20] Just last week, in its *Wireless Broadband Order*, the Commission emphasized its view that "wireless broadband will play a critical role in ensuring that broadband reaches rural and undeserved areas, where it may be the most efficient means of delivering these services."[21] Wireless broadband offers unique benefits in rural and hard-to-serve areas. The ability to access information while *mobile* is of particular advantage to customers in rural areas, who may have to travel greater distances between their homes, places of work, and other routine destinations. In addition, mobile broadband offerings generally can be accessed on devices that are substantially *more affordable* than a home computer. The greater affordability of devices for mobile wireless broadband access can be particularly beneficial to lower-income rural consumers who would not otherwise be able to access broadband service.

Fourth, any cap targeting wireless ETCs would also undermine the Commission's public-safety goals, particularly in rural areas. Every day, approximately 240,000 E-911 calls are made using mobile wireless devices.[22] As the Commission has recognized, "the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities."[23]

(citing FCC's agreement with principle that "the government should not pick winners and losers among rival technologies or industries").

[19] Remarks of Commissioner Michael J. Copps, OECD Conference on the Future Digital Economy, Rome, Italy, 2006 FCC LEXIS 576 (January 30, 2006).

[20] Although broadband is not a supported service, the Commission has recognized that "the network is an integrated facility that may be used to provide both supported and non-supported services," and has committed itself to "ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order and Order on Reconsideration*, 18 FCC Rcd 15,090, 15,096-97 (2003) *("Supported Services Order")*. For wireless carriers as for wireline LECs, the availability of universal service for network expansion frees up capital, making it available to make broadband available in rural areas.

[21] *Wireless Broadband Order* at ¶ 17.

[22] *Wireless Quick Facts: December 2006*, CTIA – The Wireless Association, *available at* http://www.ctia.org/advocacy/research/index.cfm/AID/10323 (last accessed Mar. 29, 2007).

[23] *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, 19 FCC Rcd 1563, 1576 ¶ 29 (2004).

Fifth, a wireless-only cap would be a bad interim solution to problems with the USF because it fails to ensure that all parties will return to the table to consider true, permanent reform. Any "interim" solution that inflicts all the pain on the wireless industry and its customers will do little to encourage wireline carriers to come to the table and consider more meaningful reforms, such as competitively-neutral reverse auctions. As Senator Rockefeller and his colleagues have noted, ultimate long-term reform will be impossible "[u]nless all recipients have an incentive to find solutions to controlling the growth of the USF."[24]

Sixth, even putting aside the concern described immediately above, the expectation that any wireless-only cap will be "interim" in nature should not provide the Joint Board – or the public – any consolation. Time and again, "interim" solutions adopted by the FCC have become "permanent" regulatory frameworks, as efforts to enact permanent reform have stalled. Examples of this phenomenon abound: The Commission's "interim" USF rules for rural LECs, which permit those carriers to collect support based on their embedded costs, have outlived their intended lifespan by almost a year, with no permanent reform in sight.[25] Its "interim" USF contribution safe harbor, which governs the jurisdictional allocation of wireless carriers' revenues, was first enacted in 1998, and meant to last only "until [the FCC] develop[ed] final rules."[26] The safe harbor, however, lives on, and has indeed been modified twice since its inception to expand wireless carriers' contribution obligations.[27] The Commission's most recent effort to reform the badly broken intercarrier compensation regime, moreover, has languished for almost six years, notwithstanding nearly universal criticism of the current approach.[28] Under these circumstances, promises that a platform-specific cap will only constitute an "interim" or "temporary" fix do little to allay the worries of the wireless providers and rural customers that that such a cap would punish – and should do little to comfort the Board.

Last but far from least, a wireless-specific cap would utterly fail to address (and indeed would exacerbate) the root cause of today's oversized Fund. Excessive Fund growth has resulted in large part from the current rules' failure to conform the support rules applicable to rural incumbent LECs to the 1996 Act's pro-competitive mandate. Rural incumbent LECs' loss of customers does not reduce their support; rather, it increases the per-line support available to the rural incumbent LEC *and* all of the competitive ETCs in the study area. A wireless-only cap would neither reduce these currently bloated support levels nor account for consumers' growing preference for mobility.

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[24] *Senate Letter*.

[25] *See generally Federal-State Joint Board on Universal Service* et al., 16 FCC Rcd 11244 (2001).

[26] *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 21252, 21257 ¶ 10 (1998).

[27] *See generally USF Contribution Order*; *Federal-State Joint Board on Universal* Service et al., 17 FCC Rcd 24952 (2002).

[28] *See generally Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 (2001).

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CTIA shares the Joint Board's concern regarding growth of the Fund, and urges the Board to take decisive action to bring discipline into the universal service funding process. In doing so, however, the Board must not lose sight of the consumer – who is, after all, the only intended beneficiary of the universal service program. To protect consumers, the Commission must adopt competitively neutral policies that promote technologies that win out in market competition, and must resist calls for artificial governmental preferences. Such a regime would inevitably fail to solve the very problem that reform was meant to address.

Sincerely,

/s/ Paul Garnett

Paul Garnett

Attachment

cc: Hon. Ray Baum, Jt. Bd. State Chair
Michael Weirich
Cynthia Van Landuyt