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Via Electronic Filing

Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45

Dear Chairman Martin and Commissioners:

MTPCS, LLC d/b/a Cellular One provides cellular and PCS in Montana, Wyoming, Oklahoma and Texas. Our Cellular One company provides the following proposals in connection with reform of the universal service system.

We preface our proposals with the request that the FCC put out the agency's currently rumored proposals – at a minimum, those that are not mandatory for current action – for appropriate, clear and specific notice and comment as provided in the Administrative Procedure Act. This letter respectfully suggests necessary changes to improve the rumored proposals, although we still prefer different reform plans proposed in the past that would better provide a level playing field and reduce high-cost spending by ensuring that support travels with the customer. All carriers, including wireless, have some traffic-sensitive costs that logically decline with decreases in customer base, and increase with subscribership.

That said, in connection with the rumored proposals that may be adopted on Election Day, in order to marginally soften the blows to Americans who rely on wireless communications, such as public safety officers, many ranchers and farmers, tourism professionals, construction, real estate, and more, in light of the apparently proposed revocations of support to rural wireless networks in the midst of a dark economic climate, we respectfully offer these suggested modifications.

I. Proposals

- Adopt the CTIA five-year transitions proposal. This is critical in the event the proposals have the effect of reducing high-cost support; transition periods can reduce impact on business plans and previously-incurred contractual obligations to purchase buildout materials and services.
- Start the five-year transition period upon adopting a carefully developed replacement support mechanism that provides sufficient and technologically neutral support. A replacement would be best adopted by employing logic, forethought and specific notice and comment, such as

through FNPRM and resulting order, prior to implementing a transition off identical support. One cannot transition off one mechanism and onto nothing.

- Ensure support for wireless is ***sufficient*** to ensure the nation will continue to have mobile services in rural areas where they are currently offered, and may obtain such services in rural areas currently lacking wireless service.
  - This includes ensuring that support is sufficient to actually pay for wireless service deployment and operation, including any mandatory wireless broadband. Many areas and states still lack competitive service options for their citizens. As noted in the attached letter, for example, thousands of square miles in Montana lack quality wireless coverage – or any wireless service at all. CETC support is necessary to ensure that consumers receive the quality wireless coverage they desire for Montana and other rural states. Commercial wireless is only approximately 20 years old, and its services have only started receiving funding within, in most cases, the last five years. This is not a logical time to stop support for wireless rural buildout. Mobility is critical for public safety and development of rural businesses, education and health care. Wireless is increasingly chosen as citizens' only communications technology –27% in recent J.D. Powers & Associates study. *See, e.g.*, http://www.wirelessandmobilenews.com/2008/10/27_wireless_customers_abandone.html
  - This increasing number of households using only wireless indicates increasing substitution of services. Consumer choice should be supported in rural areas, particularly in light of the accompanying safety and job creation opportunities.
- Eliminate any interim benchmarks in broadband deployment timing. Small carriers are likely to encounter difficulty with initial 20% benchmarks, because implementing broadband in any part of an existing network generally requires an expensive and time-intensive switch upgrade or replacement. A local carrier with one switch would be placed in a very different situation by such rules than a carrier with numerous switches.
- Provide that any cap will rise incrementally (a) for inflation, (b) to fund wireless as well as wireline broadband deployment costs, and (c) to accommodate CETCs' eligibility received in additional areas.
- Revise any "filing on own costs" proposal for wireless to eliminate inaccuracies (such as determining a wireless carrier's "actual costs" from neither its actual costs nor its subscriber numbers). Employing consultants who are experts in wireless cost models and wireless accounting, design or add an equivalent of Part 36 and NECA Tariffs so as to properly account for wireless costs, while understanding that wireless small businesses, while offering a beneficial service to the public, should not be asked to support the cost of complying with an enormous new administrative burden of filing their costs. Wireless carriers should receive support for their costs of complying with any new cost analysis and filing requirements.
- At a minimum, we respectfully urge the Commission to engage in a thoughtful Further Notice cycle and develop considered rules to ensure that any cost-based wireless mechanism will support the costs of compliance with any new mechanism, and:
  - Compare a wireless carrier's high-cost area costs to average *wireless* urban costs in determining whether an area is high cost.
  - Use a carrier's own subscriber counts to determine its costs per subscriber (wireline line counts range from vastly more numerous to less numerous than wireless subscriber counts, depending on carriers' sizes, longevity in marketplace, terrain, land availability for conduits or towers, etc., etc.).

- ➢ Accommodate actual costs of running a wireless business, not just costs familiar to wireline accountants. For example, spectrum license payments, handset subsidies, and customer care and billing for complex new technologies. Perhaps the Commission could hire several senior wireless accountants or wireless cost consultants, even on a temporary basis, to provide expertise in this regard.
- ➢ Clearly support costs incurred outside a rural area to support that area's traffic, such as allocations of core network capex/opex; allocation of cost of towers nearby covering the area; backhaul all the way to the switch, etc.

II. Background - MTPCS

(1) Rural wireless support is much needed in Montana. ***Hundreds of square miles still lack quality wireless coverage.*** See attached letter from Montana's Senators and newspaper article.

(2) Most areas where MTPCS was granted Montana ETC status lack any existing CETCs.

(3) Rumored proposals likely to halt or roll back rural wireless, harming consumers, the intended beneficiaries of the Universal Service Fund.

(4) MTPCS was granted ETC status on April 15, 2008. April 29, 2008 cap adoption. March 31, 2008 cap cutoff date. Result: material reduction/roll back in support for Montana CETCs; under-funding of costs of serving high-cost areas.

(5) Montana PSC buildout requirement: MTPCS is required, by the Montana Commission's rules and designation order, build to cover 98% of the population in designated areas within 5 years.

(6) Business plans and cell site construction agreements require "predictable" and "sufficient" support.

(7) ***The proposed order, to the extent it results in less rural wireless support, would exacerbate the difficulty of government-mandated buildout in high cost areas without sufficient support. This could halt rural wireless operations and deployment.***

III. <u>The Public Interest</u>

- Mobility is critical for public safety and development of rural businesses, education and health care. Wireless is increasingly citizens' only communications technology –27% in recent J.D. Powers & Associates study. *See, e.g.,* http://www.wirelessandmobilenews.com/2008/10/27_wireless_customers_abandone.html This indicates increasing substitution of services.
- The Committee Report said 1996 Act intent was opening the market, advancing universal service support for new technologies such as wireless, and definitional updates to "ensure that all Americans share in the benefits of new telecommunications technologies." *See* S. Rept. 104-23, at 5, 27.
- Because the Fund rose prior to the cap, wireless did not take away from wireline support. The attacks on wireless support were based hopefully on a "bump," an increase in support expressly in order to implement Congressional intent, by funding wireless as well as other competitive services once the 1996 Act was finally implemented. However, that increased rate of support started to decline prior to the cap; most major carriers had already obtained ETC status. The sky,

it turned out, did not fall. A continuation in support growth at the revised rate, or even slower rates over time, would not explode the Fund.

- The customer contribution per minute of use has continued to decline because prices for wireline and wireline services have continued to decline. Thus, customers now pay fewer contribution dollars than they used to. See attached data tables. Ergo, the Fund is not exploding; there has been no detriment in fact to customers.
- Wireless carriers and customers make the largest single-industry contribution, 40% of the entire Fund, yet wireless has not complained about the growth in the Fund to accommodate the much lesser amount, approximately 30% of the high-cost portion of the Fund (1/7 of the entire Fund), that wireless receives back in order to extend service to consumers in rural areas.
- Attacking support for rural wireless serves no consumer-positive purpose, but does seem designed to ensure that areas now receiving little or no wireless service will continue to receive little or no wireless service.
- The draft item under consideration would undermine carriers' ability to recover their costs and could force carriers that provide good quality rural wireless service to abandon further operations or buildout. The public interest would be better served by encouraging quality buildout and operation of this useful and consumer-desired telecommunications technology.

Accordingly, we urge the Commission to consider that wireless is deserving of fair and balanced treatment, including the proposals listed above.

Respectfully submitted,

Jonathan D. Foxman
President and CEO

Cc: Marlene Dortch, Secretary