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December 7, 2009

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Notification of Ex Parte Presentation of Toyota Motor Sales, Inc. A *National Broadband Plan for Our Future*, GN Docket No. 09-51, *Universal Service Contribution Methodology*, WC Docket No. 06-122**

Dear Ms. Dortch:

On December 7, 2009, Michelle Avary of Toyota Motor Sales, Inc. (“Toyota”) and the undersigned met with Nicholas Degani, Jennifer McKee, Carol Pomponio, Vickie Robinson, and Cindy Spiers of the Wireline Competition Bureau and Rebekah Goodheart and Tom Koutsky of the Commission’s Omnibus Broadband Initiative Team regarding the universal service contribution methodology. Pursuant to Section 1.1206 of the Commission’s rules, Toyota summarizes below the arguments presented at this meeting and is filing a copy of this letter via ECFS.<sup>1</sup>

The purpose of the meeting was to explain, consistent with prior submissions,<sup>2</sup> Toyota’s opposition to imposing numbers-based universal service fund (“USF”) assessments on providers

<sup>1</sup> In addition, the substance of this letter responds to NBP Notice #19, which seeks comment on a variety of issues including the universal service contribution methodology. *Comment Sought on the Role of Universal Service Fund and Inter-carrier Compensation in the National Broadband Plan*, Public Notice, GN Docket Nos. 09-47, 09-51, 09-137 (rel. Nov. 13, 2009).

<sup>2</sup> See Comments of Toyota Motor Sales, Inc., WC Docket No. 06-122 et al. (filed Nov. 26, 2008); Ex Parte Letter of Matthew A. Brill to Marlene H. Dortch, WC Docket Nos. 06-122 and 96-45 (filed Oct. 24, 2008).

of telematics services. While a numbers-based contribution methodology might be lawful and perhaps sensible for telephone companies, it would violate Section 254(d) and undermine the public interest if applied to telematics providers like Toyota. Indeed, the radical cost increases that would flow from a flat monthly charge of approximately \$1.00 per number would threaten the viability of life-saving telematics services. Therefore, if the Commission adopts such an approach as a general matter, it should establish an alternative assessment mechanism that at most maintains the minimal usage-based charges to which telematics providers are subject today.

By way of background, we explained that Toyota, a leading manufacturer of automobiles in the United States and worldwide, offers telematics services in several of its Toyota vehicles and the requisite equipment is standard on all Lexus models. Vehicle telematics offer a suite of emergency and convenience features on a subscription basis, including airbag deployment notification, emergency services dispatch, stolen vehicle location assistance, and roadside assistance, among others. This service does not enable subscribers to place calls to, or receive calls from, any landline or wireless phone, and thus is not subject to “telecommunications” regulation under established precedent.<sup>3</sup> Rather, Toyota’s telematics service is an information service that makes use of—but does not entail the offering of—telecommunications. In other words, Toyota is a *purchaser*, not a *provider*, of telecommunications.

Specifically, Toyota purchases wireless connectivity between its vehicles and a call center from a Commercial Mobile Radio Service (“CMRS”) carrier in a business-to-business transaction, as an input into its retail information service. The CMRS carrier assigns telephone numbers to Toyota to enable this connectivity. These numbers are embedded in the telematics device inside the vehicle, and are not accessible to (or even known by) the retail subscribers to the telematics service. Under the Commission’s existing rules, the CMRS carrier contributes to universal service based on the interstate revenues derived from the telecommunications service it provides to Toyota, and it passes through that contribution cost to Toyota. Because Toyota’s telematics subscribers use a very low volume of airtime each month, however, the resultant universal service costs on a per-user basis amount to only a few cents per month. As a result, increasing the monthly USF fee associated with each telematics user to anything approaching \$1.00, as contemplated under most numbers-based proposals, would represent staggering increases of more than 3,000 percent.

We reviewed each of the arguments Toyota has made demonstrating that imposing such draconian fee increases would violate the Communications Act, Commission precedent, and the Administrative Procedure Act (“APA”), while also undercutting important public policy objectives.

*First*, we explained that imposing direct numbers-based contribution obligations on telematics providers would violate Section 254(d) of the Act and would be arbitrary and

<sup>3</sup> See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, ¶¶ 64-90 (2003) (“2003 E911 Order”).

capricious in several respects.<sup>4</sup> Most fundamentally, telematics providers do not offer or provide “telecommunications” to their subscribers at all, and thus cannot be assessed contributions under Section 254(d) (or any other statutory provision). Indeed, regardless of whether they use telephone numbers, it would make no sense to impose direct USF contribution obligations on telematics providers, because their customers “have no capability to communicate with other end users on the PSTN.”<sup>5</sup> In any event, extending contribution obligations to entities other than “telecommunications carriers” is permissible only to the extent necessary to promote the public interest, and that standard is not remotely satisfied by massive fee increases that threaten the viability of life-saving telematics services.

Nor could subjecting telematics providers to such dramatic fee increases be squared with the statutory mandate to ensure that contribution burdens are “equitable” and “nondiscriminatory.” It would obviously be unfair to impose the very same contribution charge on (a) a carrier that earns revenues of, say, \$50 per month from 1,000 minutes of telecommunications usage, and (b) on a telematics provider whose customers pay an imputed cost of \$1 or so for using around four minutes of wireless airtime each month. In fact, since the USF charge in this context would far exceed the value of the underlying *interstate* telecommunications usage, the Commission would replicate the exact error identified in *Texas Office of Public Utility Counsel* if it were to impose a USF charge of approximately \$1.00 per number per month on telematics providers.<sup>6</sup>

*Second*, we explained that the harms to telematics providers caused by a numbers-based USF assessment would be greatly exacerbated by the adverse implications for public safety. Telematics services help save lives. From automatic crash notifications to other services that enhance the effectiveness of emergency response, these subscription-based services can play an important role in safeguarding American motorists and passengers. Regulatory changes that deter consumers from subscribing to such services therefore should be undertaken only when absolutely necessary.

Notably, the Commission itself has touted the significant benefits delivered by telematics services. For example, they rely on GPS technology to provide location capabilities for emergency calls that generally outperform the accuracy requirements under the E911 rules, and they can deliver such location information with every emergency call, regardless of whether the PSAP is Phase II compliant.<sup>7</sup> The Commission, joined by public safety organizations, further

<sup>4</sup> See 47 U.S.C. § 254(d) (providing that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis,” to the federal universal service support mechanisms, and further specifying that other providers of “interstate telecommunications may be required to contribute . . . if the public interest so requires”).

<sup>5</sup> 2003 E911 Order ¶ 71.

<sup>6</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999).

<sup>7</sup> 2003 E911 Order ¶ 72.

recognized that telematics providers' emergency call centers offer important enhancements to existing public safety tools, including the abilities to: screen calls and avoid burdening PSAPs with non-emergency communications; gather additional information about the nature of an emergency beyond mere location and call-back data; and direct calls to the correct jurisdiction (in contrast to less reliable cell tower-based systems).<sup>8</sup> These attributes benefit not only telematics subscribers, but all consumers, since they "relieve[] pressure on PSAPs" and thus enable them to respond to traditional E911 calls more efficiently and effectively.<sup>9</sup>

In light of these important public safety benefits, the Commission should proceed with extreme caution as it contemplates any changes that would increase telematics providers' USF contributions. Without question, dramatically increased fees would deter motorists from subscribing to telematics services. Indeed, the history of public safety regulation demonstrates that consumers may be reluctant to pay for optional safety features, no matter how valuable, thus belying any claim that the benefits of telematics services will immunize them from subscription losses in the event of significantly increased regulatory fees.<sup>10</sup>

Based on the foregoing concerns, we argued that the Commission should ensure that telematics services are not subject to significantly increased USF contribution burdens, irrespective of any USF contribution reform it undertakes with respect to voice services and broadband Internet access. The Commission could impose an alternative charge on telematics services (as has been proposed for prepaid wireless services) if it were to adopt a flat numbers-based charge, or it could forego USF charges altogether based on the non-interconnected nature of standard telematics.<sup>11</sup> But there can be no justification for radically increasing the charges

<sup>8</sup> *Id.* ¶¶ 73-75.

<sup>9</sup> *Id.* ¶ 75.

<sup>10</sup> Not only would Toyota face dramatic USF increases once consumers signed up for telematics service, but the burdens would begin even earlier and would extend beyond direct contribution costs. Toyota's telecommunications supplier embeds phone numbers in vehicles before they are shipped to dealers for sale, and as a result Toyota would bear the cost of numbers-based charges for several months before it could even initiate its provision of telematics service to the vehicle owner. Moreover, subjecting telematics providers to direct payment obligations would impose significant and unprecedented administrative burdens. Unlike carriers, which are well-versed in the intricacies of Commission regulations and USAC procedures, providers of standard telematics services are generally unregulated and have no experience with the mechanics of USF contributions. Forcing such entities to file quarterly and annual worksheets and to make monthly payments to USAC, with significant risks of liability even for inadvertent reporting or contribution errors, would add a new level of overhead expense and risk that would further deter the continued provision of telematics services.

<sup>11</sup> By contrast, Toyota has consistently made clear that, if a telematics provider offers resold CMRS service in the form of a "personal calling" option, the regular USF charges should apply in such circumstances.

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borne by users of telematics services, whether in the name of USF reform or developing a national broadband plan.

Sincerely

/s/ Matthew A. Brill

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*Counsel for Toyota Motor Sales, Inc.*

cc: Rebekah Goodheart  
Tom Koutsky  
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