

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	
)	
International Comparison and Consumer)	
Survey Requirements in the Broadband Data)	GN Docket No. 09-47
Improvement Act)	
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications Capability to)	
All Americans in a Reasonable and Timely)	
Fashion, and Possible Steps to Accelerate)	GN Docket No. 09-137
Such Deployment Pursuant to Section 706 of)	
the Telecommunications Act of 1996, as)	
Amended by the Broadband Data)	
Improvement Act)	
_____)	

**COMMENTS - NBP PUBLIC NOTICE # 19
OF
T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”) submits these comments in response to the above-captioned public notice addressing the role of the Universal Service Fund (“USF”) and intercarrier compensation (“ICC”) in the National Broadband Plan.¹ Fundamental reform of the USF and ICC programs is critical to the ultimate success of the National Broadband Plan. Therefore T-Mobile urges the Commission to address promptly the long pending USF and ICC reform proceedings so that consumers – especially those in underserved and unserved areas – may reap the benefits of greater broadband availability.

¹ See FCC Public Notice, *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, NBP Public Notice # 19*, GN Docket Nos. 09-47, 09-51, 09-137, DA No. 09-2419 (rel. Nov. 13, 2009) (“*Public Notice # 19*”).

I. ENSURING THAT THE UNIVERSAL SERVICE FUNDING MECHANISM IS COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL AND SUBJECT TO REASONABLE OVERSIGHT MEASURES IS KEY TO PROMOTING BROADBAND.

T-Mobile shares the Commission's goals of minimizing the size of the USF and making broadband services available to all consumers in the United States.² Although these goals may seem to be at odds, both are achievable if the Commission implements reasonable and effective reform of the USF program. Consumers who face widespread unemployment and other challenges from the economic downturn require meaningful reform now more than ever; they should not be saddled with paying for the record-breaking USF contribution factor of more than 14 percent likely to become effective in January 2010.³

A. Consumers Will Not Enjoy the Potential Benefits of the National Broadband Plan Unless the USF Program is Competitively and Technologically Neutral.

T-Mobile's position regarding the need for comprehensive reform of the USF program is well documented.⁴ With regard to the National Broadband Plan in particular, the Commission cannot adequately promote the ubiquitous deployment and availability of broadband services unless certain key aspects of USF reform are implemented. Specifically, the existing USF mechanism – a remnant of the old wireline-centric regulatory framework that was designed to support monopoly circuit-switched voice networks – distorts incentives for investment and is

² See *Public Notice # 19* at 1.

³ See Opening Statement of R. Boucher, House of Representatives, Subcommittee on Communications, Technology and the Internet: Hearing on the Draft of the Universal Service Reform Act of 2009 (Nov. 17, 2009) (noting that the USF contribution factor is expected to increase to 14.2 percent in the first quarter of 2010).

⁴ See, e.g., Comments of T-Mobile USA, Inc., GN Docket No. 09-51 (June 8, 2009) ("*T-Mobile NBP NOI Comments*"); Comments of T-Mobile USA, Inc., WC Docket Nos. 05-337, 03-109, 06-122, 04-36, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68 (Nov. 26, 2008) ("*T-Mobile ICC/USF Notice Comments*"); Comments of T-Mobile USA, Inc., WC Docket No. 05-337, CC Docket No. 96-45 (Apr. 17, 2008) ("*T-Mobile CETC Support Comments*").

woefully outdated in light of today's broadband and Internet-based technologies and services, including wireless services. Incumbent local exchange carriers ("ILECs") who receive a guaranteed revenue flow under the current mechanism have no incentive to control costs, act efficiently, or innovate. The harmful effects of such market distortion will continue to worsen unless ILECs are weaned from guaranteed subsidies and forced to compete on an equal footing with other service providers. Accordingly, the Commission should ensure that the USF program – on both the contribution and distribution side – is competitively and technologically neutral. Only then will consumers avoid bearing the brunt of the inefficiencies, arbitrage opportunities, and other biases created by the current mechanism.

First, if broadband becomes an explicit USF-supported service, the Commission should expand the fund's contribution base to include the widest base of contributors.⁵ Regardless of the methodology the Commission ultimately chooses to employ to assess USF contributions, all service providers, including broadband Internet access providers, should contribute to the USF on an equitable and non-discriminatory basis.⁶ Failure to adopt a competitively and technologically neutral methodology would lead to further market distortions and could unreasonably skew consumers' service choices.⁷

⁵ See *Public Notice # 19* at 2-3.

⁶ For example, the USF support mechanism currently relies on wireless carriers to finance approximately 41 percent of USF contributions. In contrast, the USF provides three times as much support to previously deployed legacy wireline operations than to new technologies that are being deployed. See Reply Comments of CTIA-The Wireless Association, GN Docket No. 09-51, at 20 (July 21, 2009).

⁷ For example, in the event the Commission adopts a contribution methodology based in whole or in part on telephone numbers, it should ensure that wireless consumers are not disproportionately burdened with USF contribution pass-through charges by: (1) assessing only 50 percent of the per-number standard contribution fee for non-primary lines in a wireless family share plan, (2) adjusting the standard contribution fee for wireless prepaid users, and (3)

Second, the Commission should eliminate the disparities in universal service funding caused by the current cap on high-cost support received by competitive eligible telecommunications carriers (“CETCs”).⁸ The CETC funding cap predominantly affects wireless carriers and thus undermines deployment of mobile broadband – increasingly the most expeditious and cost-effective platform to bring broadband to rural and difficult-to-serve customers. A cap that effectively discriminates against particular types of technologies such as wireless only hampers competition and consumers’ ability to choose the services and providers that best suit their individual needs. Thus, to be legally sustainable, high-cost USF support, including support allocated for broadband services, must be fully portable to CETCs.⁹ Further, to the extent the Commission retains a cap on high-cost or any other type of USF support, it should apply equally to all eligible telecommunication carriers.

Third, the Commission would advance competitive neutrality and help maintain the viability of the high-cost program by implementing full portability, specifically by reducing ILECs’ support when they lose access lines, as is the case with CETCs.¹⁰ The high-cost support fund is growing in large part because rural ILECs do not lose support when they lose customers, which increases their support per access line and substantially reduces their incentives for improved efficiency.¹¹ The result is an ever-ballooning fund, the cost of which is ultimately

exempting numbers or connections used for machine-based services such as smart meters for smart grid deployment. *See T-Mobile ICC/USF Notice Comments* at 15-17.

⁸ *See Public Notice # 19*, at 2-3; *see also T-Mobile CETC Support Comments* at 8-11.

⁹ *See id.* at 4-6. *See also* Comments of CTIA-The Wireless Association, WC Docket No. 05-337, CC Docket No. 96-45, at 12-18 (Apr. 17, 2008).

¹⁰ *See T-Mobile ICC/USF Notice Comments* at 23; *see also* Comments of CTIA-The Wireless Association, WC Docket No. 05-337, CC Docket No. 96-45, at 3-5, 10 (June 6, 2007).

¹¹ *See Public Notice # 19* at 1, 4-5.

borne by consumers. In contrast, CETCs receive support only for access lines that they win competitively.¹²

Fourth, the Commission should support broadband deployment through an expansion of the USF Lifeline/Link-Up program for low income consumers.¹³ The National Broadband Plan can initiate this program by committing to the adoption of a Broadband Lifeline/Link-Up pilot program like the Commission initially proposed in 2008.¹⁴ Lifeline/Link-Up funds could be used to support low-income consumers' access to mobile broadband services in both urban and rural areas. It is important that any pilot program also be competitively and technologically neutral so that consumers, rather than government mandates or arbitrary economic disincentives, can determine the best broadband delivery method that suits their individual needs.

B. Universal Service Oversight and Accountability Mechanisms Should Be Clear, Open, and Reasonable.

T-Mobile supports the Commission's endeavors to minimize waste, fraud, and abuse and to ensure that recipients of any broadband high-cost support use the funds as envisioned.¹⁵ Service providers receiving USF monies for broadband services (as well as any other USF-supported services) should continue to be subject to the Commission's standard certification and other reporting and compliance requirements, including undergoing reasonable periodic audits.

¹² Chinook Wireless previously pointed out that if total ILEC high-cost support had declined commensurately with ILEC line counts from 2001 to 2007, the high-cost fund savings would have far exceeded the entire amount of high-cost support received by CETCs in the same period. *See Implementing Portability for ILECs Will Save Far More USF Support Than Any CETC Cap Could Accomplish*, at 3, attached to Letter from Julia Tanner, General Counsel, MTPCS, LLC d/b/a Chinook Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (Feb. 28, 2008).

¹³ *See Public Notice # 19* at 6-8.

¹⁴ *See High-Cost Universal Service Support*, 24 FCC Rcd 6475, Appendix A (2008).

¹⁵ *See Public Notice # 19* at 6.

While the audit process is central to protecting the USF and consumers, its effectiveness depends upon adherence to reasonable and transparent processes. The Commission must ensure that both the auditors and the service providers that are subject to audits have sufficient information, particularly including documentation requirements, before the supported services are provided. For example, unspecified or vague document retention requirements and undefined audit procedures can result in adverse audit findings simply because the audited companies were not on notice that they were expected to retain certain requested documentation.¹⁶

A fair and open audit process is crucial to the success of any universal service broadband initiatives under the National Broadband Plan. Service providers continue to expend significant resources responding to onerous audit demands, and are often unreasonably penalized with adverse findings and demands that USF support be repaid. These flaws in the audit process are a strong disincentive to participation in USF programs, ultimately hindering deployment and availability of valuable services to the detriment of consumers.

II. THE SUCCESS OF THE NATIONAL BROADBAND PLAN DEPENDS ON EFFECTIVE AND TIMELY REFORM OF THE INTERCARRIER COMPENSATION REGIME.

Like the USF mechanism, the ICC regime is outdated and does not advance the Commission's goal of increasing broadband adoption. The current ICC program props up obsolete technologies and business models, and creates an environment in which arbitrage opportunities abound. The goal of the National Broadband Plan to extend efficient and cost

¹⁶ See, e.g., Comments of AT&T Inc., WC Docket Nos. 05-337, 06-122, CC Docket No. 96-45, at 2-5, 22-25 (Oct. 28, 2009); Comments of Level 3 Communications, LLC, PAETEC Communications, Inc. and U.S. TelePacific Corp., WC Docket Nos. 05-337, 06-122, CC Docket No. 96-45, at 5-6 (Oct. 28, 2009).

effective broadband services to all consumers cannot be fully realized unless the market distortions created by the current ICC regime are removed.¹⁷

The ICC rules, which are premised primarily on legacy wireline voice service provided by monopoly carriers, no longer benefit the public in what has become a dynamic and multi-dimensional communications marketplace. The current patchwork of ICC rates is based upon irrelevant and arbitrary jurisdictional, regulatory, and technological distinctions among different categories of calls. The present ICC regime simply does not address the intercarrier arrangements required by new technologies, including wireless and Voice-over-Internet Protocol services, which have become essential to consumers. Instead, attempts to shoehorn these new technologies into the existing complex ICC regime have resulted in wasteful and anti-competitive behavior as some service providers attempt to game the system, leading to multiple legal disputes and creating unnecessary costs that ultimately are borne by consumers. These issues will only proliferate as new technologies based on broadband continue to evolve and are accepted in the marketplace.

As T-Mobile and others have long advocated, all subsidies should be removed from the ICC regime, and the exchange of traffic between carriers should be governed by bill-and-keep arrangements.¹⁸ Short of requiring bill-and-keep, however, imposing a unified default terminating ICC rate on all analog and IP-based traffic exchanged with or on the public switched telephone network offers the best chance of spurring innovation, cutting consumer costs, and eliminating discrimination and arbitrage behavior generated by the current scheme.

¹⁷ See *Public Notice # 19* at 4-5.

¹⁸ See *T-Mobile ICC/USF Notice Comments* at 5-15.

Until a unitary ICC regime is implemented, the Commission should curb at least one specific type of arbitrage behavior, commonly called “traffic pumping” or “access stimulation” in which arrangements between LECs and communications service providers (either affiliated or unaffiliated) result in certain types of calls being directed through the LEC’s exchange, thus artificially increasing the volume of traffic for which the LEC receives compensation. These schemes to generate inflated access revenues epitomize the anti-competitive, toll-gate behavior resulting from today’s inconsistent ICC rates and create unnecessary costs ultimately passed on to consumers. The Commission took an important first step in its recent decision resolving a complaint by Qwest Communications Corporation against Farmers and Merchants Mutual Telephone Company by signaling that certain traffic stimulation schemes are improper.¹⁹ Similar access stimulation schemes by other carriers, however, continue unabated. To protect consumers from the on-going harm caused by arbitrage schemes, the Commission should act quickly to end this anti-competitive behavior.

III. CONCLUSION.

The Commission has the opportunity through the National Broadband Plan to promote the continued deployment and evolution of broadband in the United States. The success of the Commission’s efforts, however, depends in no small part upon providing the proper economic incentives for the efficient pricing and deployment of broadband services. Accordingly, it is

¹⁹ See *Qwest Comm’ns Corp. v. Farmers and Merch. Mut. Tel. Co.*, Second Order on Reconsideration, File No. EB-07-MD-001, FCC 09-103 (rel. Nov. 25, 2009).

critical that the Commission resolve the long-pending USF and ICC reform proceedings as discussed above so that consumers may enjoy the benefits of greater broadband availability.

Respectfully submitted,

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