

# LUKAS, NACE, GUTIERREZ & SACHS, LLP

8300 GREENSBORO DRIVE, SUITE 1200  
MCLEAN, VIRGINIA 22102  
703 584 8678 • 703 584 8696 FAX

WWW.FCCLAW.COM

RUSSELL D. LUKAS  
DAVID L. NACE  
THOMAS GUTIERREZ\*  
ELIZABETH R. SACHS\*  
DAVID A. LAFURIA  
PAMELA L. GIST  
TODD SLAMOWITZ\*  
BROOKS E. HARLOW\*  
TODD B. LANTOR\*  
STEVEN M. CHERNOFF\*  
KATHERINE PATSAS NEVITT\*

CONSULTING ENGINEERS  
ALI KUZEHKANANI  
LEILA REZANAVAZ  
—  
OF COUNSEL  
GEORGE L. LYON, JR.  
LEONARD S. KOLSKY\*  
JOHN CIMKO\*  
J. K. HAGE III\*  
JOHN J. MCAVOY\*  
HON. GERALD S. MCGOWAN\*  
TAMARA DAVIS BROWN\*  
JEFFREY A. MITCHELL  
ROBERT S. KOPPEL\*

\*NOT ADMITTED IN VA

September 29, 2011

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, DC 20554

Re: WC Docket No. 10-90, 07-135, 05-337, and 03-109  
GN Docket No. 09-51, CC Docket No. 01-92 and 96-45

Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, we hereby provide you with notice of an oral ex parte presentation in connection with the above-captioned proceeding. On September 28 2011, Mary Dillon and Grant Spellmeyer of United States Cellular Corporation ("U.S. Cellular"), along with undersigned counsel, met with Commissioner Copps, Margaret McCarthy, and Mark Stone to discuss universal service and intercarrier compensation reform.

U.S. Cellular reiterated positions taken in the record of the above-captioned proceedings. The parties discussed the allocation of high-cost support for wireless carriers set forth in the ABC Plan. U.S. Cellular noted that it recently commissioned a poll of consumers as to the need for additional broadband investment in rural areas, which revealed that over half believe the right mix of investment is approximately 50-50 between fixed broadband and mobile broadband. This is consistent with national trends toward the use of mobile broadband and rural consumers' perception that mobile broadband coverage and service quality in rural areas are critical and requires additional investment.

U.S. Cellular also discussed the importance of phasing down ongoing support under the CETC mechanism simultaneously with the phasing in of a replacement mechanism that provides ongoing support for mobile broadband. In the absence of an appropriate transition mechanism, carriers will reduce investment in accordance with the phase down, which will have significant

adverse economic impacts in rural areas, at a time when our government should be expanding infrastructure investments to encourage economic development. In addition, U.S. Cellular has made commitments to many state commissions to build out cell sites and improve infrastructure, which will be imperiled by a phase-down made without a replacement mechanism in place.

We also discussed the Commission's authority under Title I to fund broadband within the universal service mechanism. U.S. Cellular agrees with other commenters that universal service is a Title II program and that carriers who apply for ETC status must take on Title II obligations when they take the benefits. The statute only permits common carriers providing telecommunications services to draw from the fund.

U.S. Cellular also requested clarification of the Commission's "no barriers" policy, which permits ETCs to invest in facilities capable of providing both basic telecommunications services as well as advanced information services. That policy, developed in 2001, is set forth in an order, but has not been codified in the Commission's rules. While carriers rely on it today, a clarification that support may be used to invest in advanced 4G technology would provide much needed certainty for carriers and accelerate the deployment of equipment in rural areas that is capable of providing advanced broadband services.

U.S. Cellular also discussed objections to the right of first refusal ("ROFR") set forth in the ABC Plan. The ROFR and its potential consequences highlight risks arising when a partial industry "consensus" occurs without an open and transparent process in which all affected parties are represented and permitted to participate.

Using the ROFR, incumbent price cap carriers may choose to be the sole recipient of support from the Connect America Fund ("CAF"). The amount of support provided to price cap carriers exercising the ROFR is to be determined by a model. That model is based on the cost of building fixed point-to-point connections to residential and business locations.

Nothing in the ABC Plan would prevent a price cap carrier from exercising the ROFR, and then meeting its build-out requirements by deploying a mobile broadband network, for example 4G LTE. If the ABC Plan is adopted without modification:

- The FCC will authorize price cap carriers to build subsidized mobile broadband networks in rural America, in direct competition with other wireless carriers who are locked out of funding by operation of the ROFR.
- The FCC will provide support to price cap carriers based on the costs of a different technology. For years, this has been characterized as the "identical support rule," and here it would be identical support on steroids. Further, under the ABC Plan, price cap carriers would not lose support when they lose customers, as the current identical support rule provides.

- By setting aside support for price cap ILECs, but allowing them to build mobile broadband networks in direct competition with other unsubsidized carriers who are locked out of the market, the FCC will abrogate its own core principle of competitive neutrality in ways never before imagined.
- This would explain why the price cap carriers included only \$300 million per year for a mobility fund in the ABC Plan, since their needs will have been met by the incremental \$1.2 billion they seek to have allocated under the plan to themselves.

The ABC Plan is antithetical to the congressional mandate that support is for consumers, not companies, and that rural citizens deserve the benefits of choice in service providers as much as urban consumers. Indeed, the ROFR recreates precisely the problem the 1996 Act intended to resolve – one carrier with all the customers and all the support. Accordingly, U.S. Cellular reiterates its strong opposition to the ROFR contained in the ABC Plan.

This example evidences a larger problem with the closed process undertaken by ABC Plan participants. The ABC Plan falls far short of being a rulemaking proposal that is sufficiently detailed to permit all interested parties to understand how it will work and what the rules will be, so that the public may submit meaningful comment. Stripped of its superfluous packaging, the ABC Plan is a summary, lacking any detail that is the hallmark of appropriate administrative rulemaking.

As more information continues to become available to those who were not in the room with the price cap carriers, we are very concerned that there are other problems within the ABC Plan that will not be unearthed until after it is adopted. Reforming universal service is a complex task that is wholly ill-suited for industry self-regulation pursuant to a summary plan dropped into the record some 90 days before a decision is to be made.

With respect to intercarrier compensation reform, U.S. Cellular reiterated comments made in the record that all rates should be reduced to bill-and-keep at the earliest possible date.

Copies of materials presented at the meeting are enclosed.

Hon. Marlene H. Dortch  
September 29, 2011  
Page 4

If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



David A. LaFuria  
Counsel for United States Cellular Corporation

Enclosure

cc: Hon. Michael J. Copps  
Margaret McCarthy, Esq.  
Mark Stone, Esq.  
Grant Spellmeyer, Esq.



## Federal Universal Service Reform

September 28, 2011

# New Polling Data Demonstrates Consumer Desire for Robust Mobile Broadband

Fako & Associates, Inc.

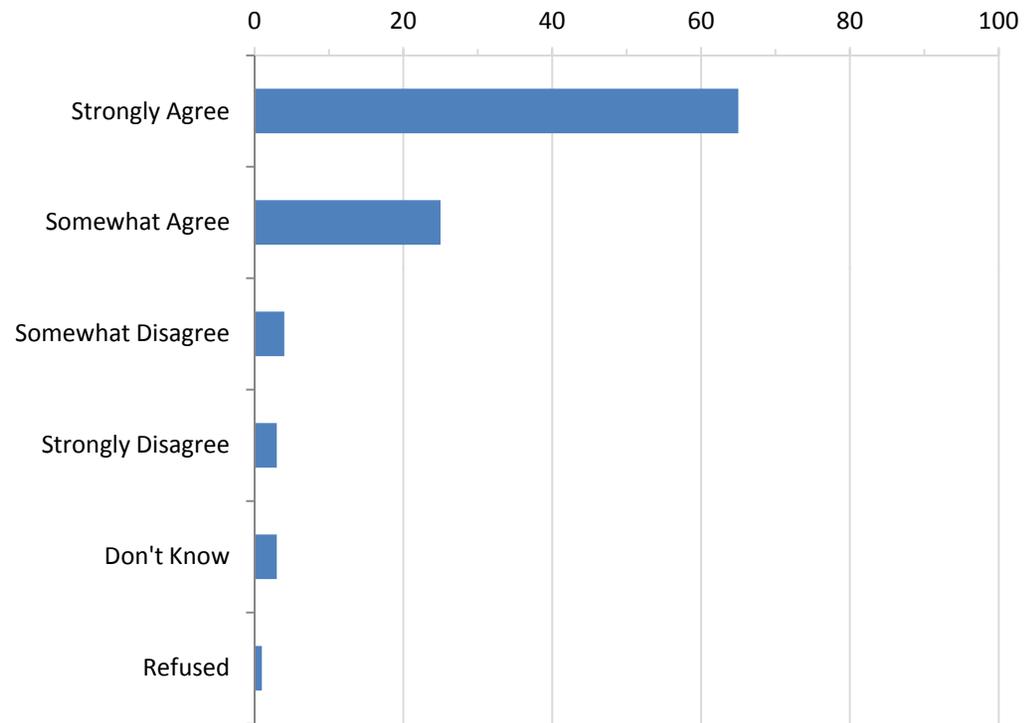
U.S. Cellular National Survey

September 9 – 17, 2011

N=1,003 margin of error +/- 3%

Now, please tell me if you **agree** or **disagree** with the following statement...  
*“Consumers in rural areas of the country should have the ability to access both landline and wireless broadband communication networks.”*  
**(Would that be strongly Agree/Disagree Or Somewhat Agree/Disagree?)**

<b>Strongly Agree</b>	<b>65 %</b>
<b>Somewhat Agree</b>	<b>25</b>
<b>Somewhat Disagree</b>	<b>4</b>
<b>Strongly Disagree</b>	<b>3</b>
<b>Don't Know</b>	<b>3</b>
<b>Refused</b>	<b>1</b>



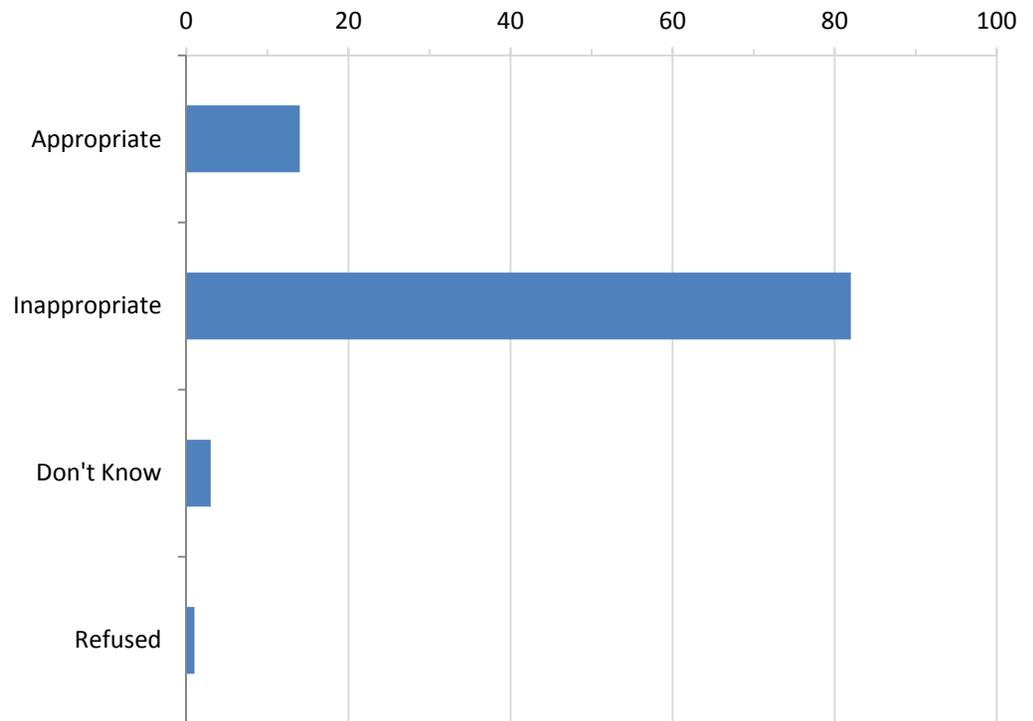
Now, as we have been discussing The Federal Communications Commission will decide how 4.5 billion dollars will be spent every year to help landline phone service providers and cell phone service providers build and improve broadband networks.

This funding can be allocated several different ways. I will read several proposed ways to allocate this funding, after each one, please tell me if you feel it is an **appropriate** or **inappropriate** way to distribute the funding.

The first one is... is this an **appropriate** or **inappropriate** distribution of funding?

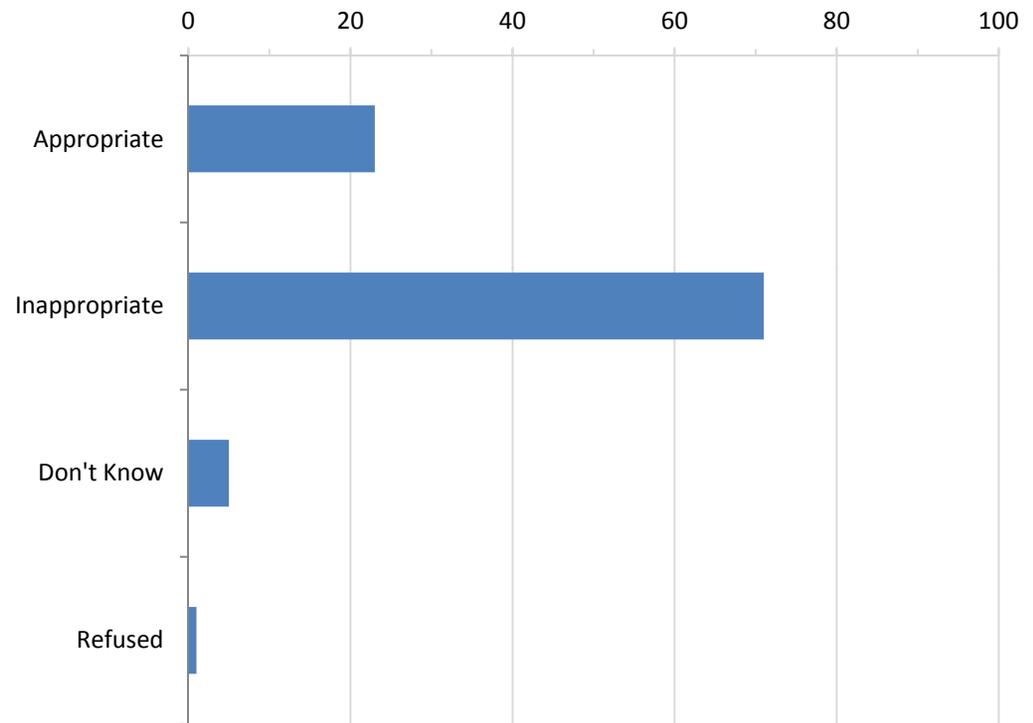
1. Five percent (5%) for cell phone service providers and ninety-five percent (95%) for landline service providers.

<b>Appropriate</b>	<b>14 %</b>
<b>Inappropriate</b>	<b>82</b>
<b>Don't Know</b>	<b>3</b>
<b>Refused</b>	<b>1</b>



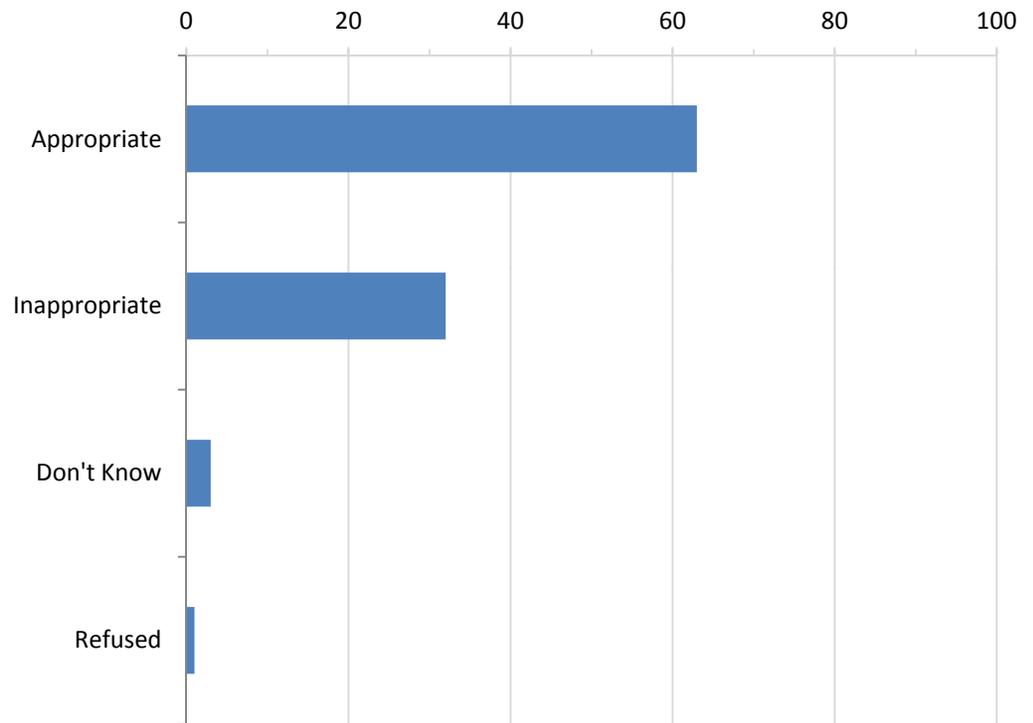
2. Twenty-Five percent (25%) for cell phone service providers and seventy-five percent (75%) for landline service providers.

<b>Appropriate</b>	<b>23 %</b>
<b>Inappropriate</b>	<b>71</b>
<b>Don't Know</b>	<b>5</b>
<b>Refused</b>	<b>1</b>



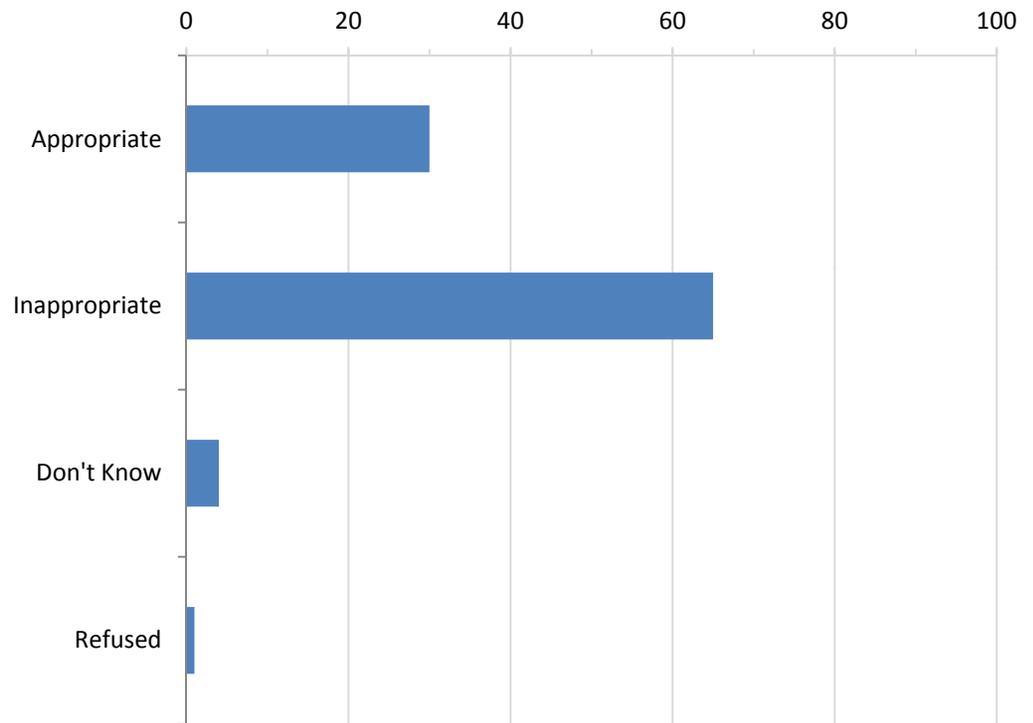
3. Fifty percent (50%) for cell phone service providers and fifty percent (50%) for landline service providers.

<b>Appropriate</b>	<b>63 %</b>
<b>Inappropriate</b>	<b>32</b>
<b>Don't Know</b>	<b>3</b>
<b>Refused</b>	<b>1</b>



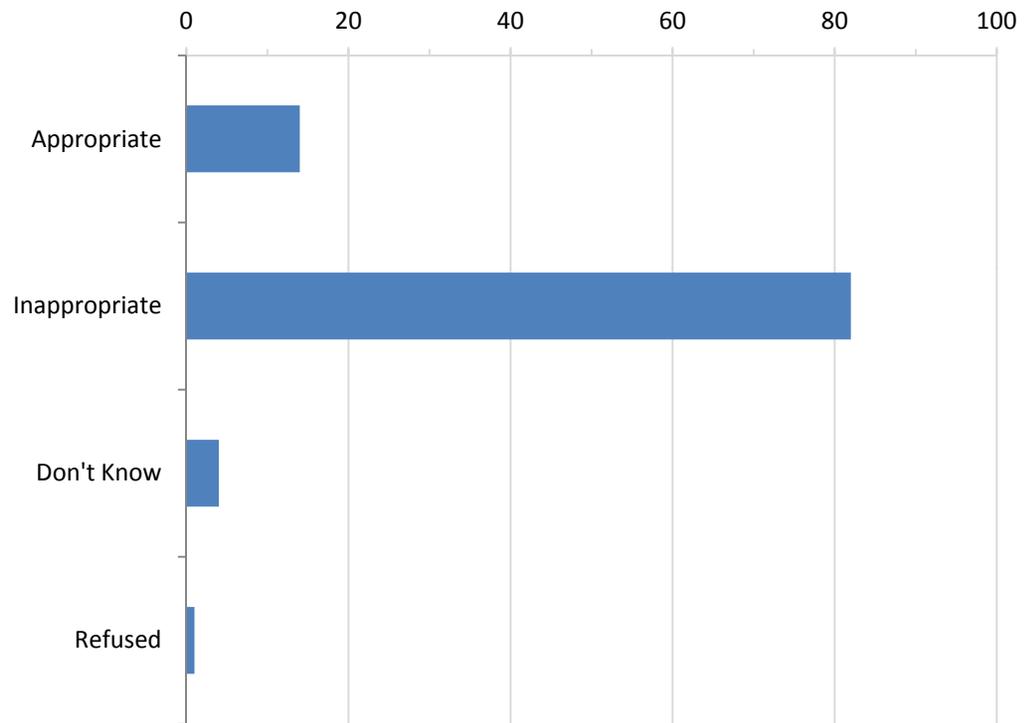
4. Seventy-five percent (75%) for cell phone service providers and twenty-five percent (25%) for landline service providers.

<b>Appropriate</b>	<b>30 %</b>
<b>Inappropriate</b>	<b>65</b>
<b>Don't Know</b>	<b>4</b>
<b>Refused</b>	<b>1</b>



5. Ninety-five percent (95%) for cell phone service providers and five percent (5%) for landline service providers.

<b>Appropriate</b>	<b>14 %</b>
<b>Inappropriate</b>	<b>82</b>
<b>Don't Know</b>	<b>4</b>
<b>Refused</b>	<b>1</b>

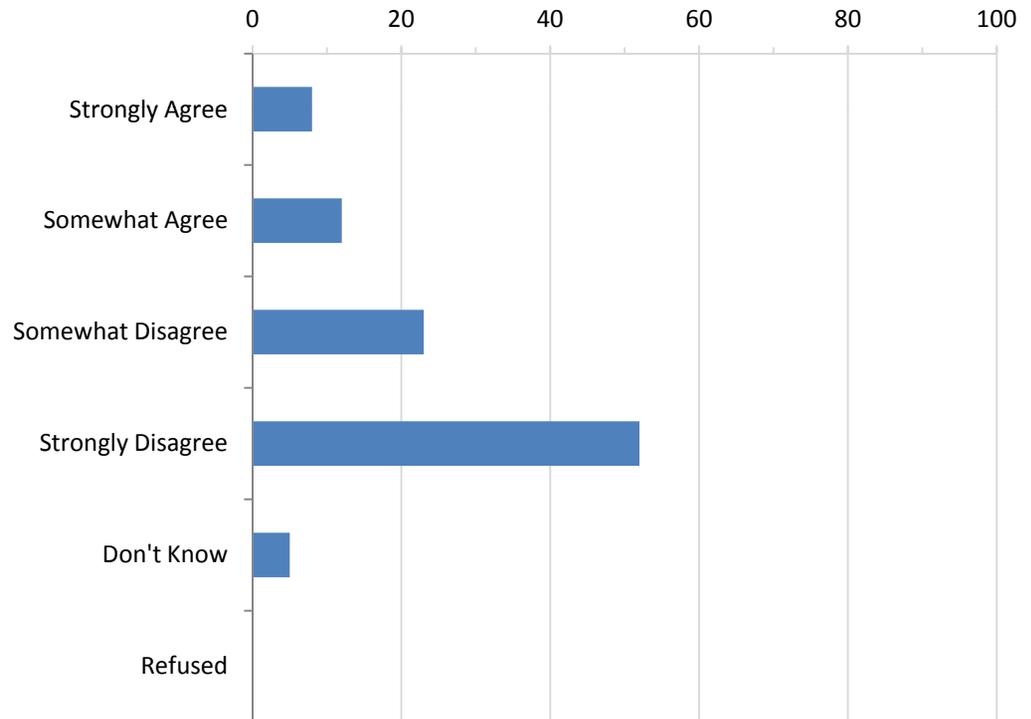


And, lastly on this subject, please tell me if you would **support** or **oppose** the following...

*There is a proposal in front of the Federal Communications Commission that would give landline phone companies the option to decide if they want to provide broadband service to a geographic area with federal funding. If they do, wireless companies would be prevented from also receiving federal funding to build and improve their wireless broadband networks in that area.*

Knowing this information, would you **support** or **oppose** this proposal?  
**(Would that be strongly support/oppose or somewhat support/oppose?)**

<b>Strongly Agree</b>	<b>8 %</b>
<b>Somewhat Agree</b>	<b>12</b>
<b>Somewhat Disagree</b>	<b>23</b>
<b>Strongly Disagree</b>	<b>52</b>
<b>Don't Know</b>	<b>5</b>
<b>Refused</b>	<b>*</b>



Fako & Associates, Inc.  
U.S. Cellular National Survey  
September 9 – 17, 2011  
N=1,003 margin of error +/- 3%