

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

October 19, 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 October 18, 2011, Grant Spellmeyer of United States Cellular Corporation ("U.S. Cellular"), along with undersigned counsel, met with Angela Kronenberg and Louis Peraertz 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 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.

U.S. Cellular pointed out that for it and many other wireless carriers that have been eligible to draw support for a number of years, the number of cell sites that are endangered by reductions in support is higher than in areas where designations have only recently been made and infrastructure is only rolling out now. Uncertainty resulting from various phase down formulations reportedly under consideration by the Commission has already made it difficult to commit to significant system expansion and threatens promises made to state regulators to build new cell sites. To the extent that the Commission is concerned about whether support under the

existing mechanism is being used appropriately, simple accountability measures for carriers can be implemented.

For example, the Commission could permit carriers to file copies of their annual reports made to state commissions pursuant to the protective order in the universal service reform dockets. Those reports would provide the Commission with a significant amount of data on which to conclude that carriers are accountable for support they are receiving.

U.S. Cellular also discussed the fact that the amount of support currently understood to be in the new proposed Mobility Fund under consideration by the Commission is inadequate to allow existing carriers to make a significant dent in the infrastructure needs of rural America. There is an incorrect perception held by some that because an unsubsidized carrier “serves” a particular area, no support is needed there despite the fact that the Commission has never provided any public analysis or data concerning the quality of service being provided by unsubsidized carriers.

U.S. Cellular pointed to a number of states where it has mobile wireless coverage superior to its competitors as a result of high-cost support. Depending upon how publicly available data is analyzed, one could conclude unsubsidized carriers are operating in many rural areas where U.S. Cellular serves. Yet U.S. Cellular’s own drive test results consistently show that in areas where support has been provided for at least several years, the company has a more robust network than unsubsidized carriers are able (or willing) to provide. And, U.S. Cellular has an obligation to continue to build out with available support, to the benefit of rural citizens who need to have coverage holes filled.

Removing support from such areas will have a number of potential negative effects. U.S. Cellular will obviously have to seriously consider reducing or even eliminating investments in areas that are not economic to serve. The company may also need to consider redeploying existing assets from remote areas to places that are profitable on a stand-alone basis. And, other unsubsidized carriers are unlikely to build a high-quality network, equivalent or better than the one U.S. Cellular has been building.

Congress gave the Commission the charge of ensuring that rural consumers have access to reasonably comparable services to those in urban areas. To date, there have been no factual findings, or even a proposal for how to properly measure the quality of mobile wireless service in rural America. Accordingly, before support to an area should be phased down or removed, there must be some methodology in place to make a fact-based determination of whether consumers are receiving adequate service quality. This is a good time to do that because throughout rural America there is very little mobile wireless service that qualifies as “broadband.”

Granted, it is much easier to determine whether a wire passes a home than to figure out the number of signal bars at a given point, but that does not make the task of measuring wireless coverage impossible. While various carrier-sponsored resources such as American Roamer

provide high-level data, those sources generally rely upon the data provided by carriers. The Commission must undertake a more granular approach, with real-time updating of service availability, before it begins in a somewhat crude fashion to simply phase down support to existing carriers across the board. The Commission has no data on which to conclude that a cut in support of any kind is the right amount, at the right time.

U.S. Cellular pointed to President Obama's most recent budget in which the administration proposed to appropriate \$5 billion to accelerate 4G mobile broadband deployment in rural areas. A copy is enclosed for reference. Allocating only \$300 million per year for mobile broadband is inconsistent with the Administration's own findings that a much larger amount, \$5 billion, is needed to jump start 4G deployments in rural areas. If the Commission were to allocate \$1 billion for wireless, which is roughly the amount of capped support now being distributed, the President's \$5 billion could be deployed within five years and there would be a guaranteed "shovel ready" aspect to this – because carriers like U.S. Cellular already have plans to build new cell sites if support is made available.

U.S. Cellular also discussed 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. With this ex parte notice, U.S. Cellular has enclosed a proposed rule change and explanatory language.

U.S. Cellular also reiterated its concern that nothing in the ABC Plan would prevent a price cap carrier from exercising a right of first refusal ("ROFR"), and then meeting its build-out requirements by deploying a mobile broadband network, for example 4G LTE. This amounts to the Commission subsidizing the two largest telecommunications carriers in the country, assisting them in competing against U.S. Cellular and other smaller wireless carriers, on a completely skewed playing field.

U.S. Cellular estimates that the ABC Plan will bestow tens of billions of dollars on price cap carriers in the next decade, with the universal service component alone being a \$10+ billion dollar windfall of additional support, with a right to be the exclusive subsidized provider in an area. Any reform that "reserves" support to the largest carriers, or provides "replacement" for existing revenue streams that is not competitively neutral and consistent with the 1996 Act must be rejected.

The idea that there is a choice between effective reform and competitive neutrality is a false choice. Wireless consumers, who contribute over \$3 billion per year, should not be unduly subsidizing revenue streams of wireline carriers. Reform should ensure that support flows move with market share and consumer choice. That is the only effective means of benefitting consumers.

Hon. Marlene H. Dortch

October 19, 2011

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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

Enclosures

cc: Angela Kronenberg, Esq.
Louis Peraertz, Esq.
Grant Spellmeyer, Esq.



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For Immediate Release February 10, 2011

President Obama Details Plan to Win the Future through Expanded Wireless Access

Initiative expands wireless coverage to 98% of Americans, reduces deficit by nearly \$10 billion, invests in nationwide public safety network

WASHINGTON—President Barack Obama will today detail his plan to win the future by catalyzing the buildout of high-speed wireless services that will enable businesses to grow faster, students to learn more, and public safety officials to access state-of-the-art, secure, nationwide, and interoperable mobile communications.

In his State of the Union address, President Obama called for a National Wireless Initiative to make available high-speed wireless services to at least 98 percent of Americans. The Wireless Innovation and Infrastructure Initiative laid out today will make it possible for businesses to achieve that goal, while freeing up spectrum through incentive auctions, spurring innovation, and creating a nationwide, interoperable wireless network for public safety. It will also reduce the national deficit by approximately \$10 billion.

The President will announce the new initiative at Northern Michigan University in Marquette, Michigan, a city where local businesses have been able to grow as a result of broadband access, with particular benefit in exporting goods to new markets around the world. He will also see a demonstration of how the university's WiMAX network has enabled distance learning for university and community students.

For more details on the President's Wireless Innovation and Infrastructure Initiative, please see the fact sheet below:

The White House

FACT SHEET: President Obama's Plan to Win the Future through the Wireless Innovation and Infrastructure Initiative

In his State of the Union address, President Obama set the goal of enabling businesses to provide high-speed wireless services to at least 98 percent of all Americans within five years. The rollout of the next generation of high-speed wireless—the "4G" technology now being deployed in the United States by leading carriers—promises considerable benefits to our economy and society. More than 10 times faster than current high speed wireless services, this technology promises to benefit all Americans, bolster public safety, and spur innovation in wireless services, equipment, and applications. By catalyzing private investment and innovation and reducing the deficit by \$9.6 billion, this initiative will help the United States win the future and compete in the 21st century economy.

- **Nearly Double Wireless Spectrum Available for Mobile Broadband:** The President has set the goal of freeing up 500 MHz of spectrum for everything from smartphones to wireless broadband connectivity for laptops to new forms of machine-to-machine communication within a decade. Critical to realizing this goal are "voluntary incentive auctions" and more efficient use of government spectrum, estimated to raise \$27.8 billion over the next decade.
- **Provide At Least 98% of Americans with Access to 4G High-Speed Wireless:** Private investments are extending 4G to most of the Nation, but leaving some rural areas behind. The President's initiative would support a one-time investment of \$5 billion and reform of the "Universal Service Fund" to ensure millions more Americans will be able to use this technology.
- **Catalyze Innovation Through a Wireless Innovation (WIN):** To spur innovation, \$3 billion of the spectrum proceeds will go to research and development of emerging wireless technologies and applications.
- **Develop and Deploy a Nationwide, Interoperable Wireless Network for Public Safety:** The President's Budget calls for a \$10.7 billion commitment to support the development and deployment of a nationwide wireless broadband network to afford public safety agencies with far greater levels of effectiveness and interoperability. An important element of this plan is the reallocation of the D Block for public safety and \$500 million within the WIN Fund.

BLOG POSTS ON THIS ISSUE

October 19, 2011 1:12 PM EDT
[The American Jobs Act by the Numbers: 5,600](#)



The American Jobs Act will give businesses that hire veterans who have been unemployed six months or longer a tax credit up to \$5,600 to encourage hiring and make it easier for America's heroes to find jobs when they return home.

October 19, 2011 1:04 PM EDT
[Spotlight on NextGen – Why Accelerating Infrastructure Matters](#)

As a frequent flier with enthusiasm for a modernized air traffic system with fewer delays, I thought to highlight one of those projects: the Next Generation Air Transportation System Infrastructure Project.

October 19, 2011 11:47 AM EDT
[Ensuring Fairness in our Criminal Justice System](#)



Director Kerlikowske met with Chicago leaders to discuss drug policy and its impact on the African American community. The discussion focused on preventing drug abuse before it begins, ensuring viable treatment options for those who need it, and expanding alternatives to incarceration like drug courts and drug market interventions.

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- **Cut the Deficit By \$9.6 Billion Over the Next Decade:** Nearly \$10 billion of spectrum auction revenue will be devoted to deficit reduction.

Details of the President's Initiative

- **Nearly Double Wireless Spectrum Available for Mobile Broadband.** The number of "Smartphones" will soon pass both conventional mobile phones and computers around the world, promising lower costs for such devices, more functionality, and greater demand for bandwidth (speed). 4G deployment is rising to meet this demand, but it relies on access to the "airwaves" that is currently constrained by a spectrum crunch that will hinder future innovation. To address this challenge, the President's initiative has set the goal of freeing up 500 MHz of spectrum. Specifically, the plan provides:
 - **Win-win incentives for government holders.** New financial-compensation tools and a commitment to using advanced technologies more effectively will enable government agencies to use spectrum more efficiently.
 - **Win-win incentives for commercial holders.** As recommended in the FCC's National Broadband Plan, legislation is needed to allow the FCC to conduct "voluntary incentive auctions" that enable current spectrum holders to realize a portion of auction revenues if they choose to participate.
- The majority of the freed up spectrum would be auctioned for licensed mobile broadband, raising a projected \$27.8 billion over the next decade, and a remainder would be for unlicensed use.
- **A Goal of 98% of Americans with Access to 4G High-Speed Wireless.** America's businesses are building out 4G networks to much of the nation, with some major companies crediting the President's recent tax incentives for accelerating their efforts. Nevertheless, absent additional government investment, millions of Americans will not be able to participate in the 4G revolution. To that end, the President's Budget supports the 4G buildout in rural areas through a one-time \$5 billion investment. This investment, to be managed by the FCC, will help catalyze universal service reform to provide access to higher-speed wireless and wired broadband, dovetail with the need for public safety to have a wireless network available in rural areas, and extend access from the almost 95% of Americans who have 3G wireless services today to at least 98% of all Americans gaining access to state-of-the-art 4G high-speed wireless services within five years. Extending access to high-speed wireless not only provides a valuable service to Americans living in those areas—access to medical tests, online courses, and applications that have not yet been invented—but also catalyzes economic growth by enabling consumers and businesses living in those areas to participate in the 21st century economy.
- **A Wireless Innovation (WIN) Fund to Help Drive Innovation.** This \$3 billion fund will advance our economic growth and competitiveness goals, supporting key technological developments that will enable and take advantage of the 4G rollout and pave the way for new technologies. The WIN Fund will support basic research, experimentation and testbeds, and applied development in a number of areas, including public safety, education, energy, health, transportation, and economic development.
- **Develop and Deploy A Nationwide, Interoperable Wireless Network For Public Safety.** The 9/11 Commission noted that our homeland security is vulnerable, in part, due to the lack of interoperable wireless communication among first responders. The rollout of 4G high speed wireless services provides a unique opportunity to deploy such a system in conjunction with the commercial infrastructure already being developed and deployed. To seize that opportunity, President Obama is calling for an investment of \$10.7 billion to ensure that our public safety benefits from these new technologies: \$3.2 billion to reallocate the "D Block" (which is a band of spectrum that would be reserved and prioritized for public safety and not auctioned as called for under existing law); \$7 billion to support the deployment of this network; and \$500 million from the WIN Fund for R&D and technological development to tailor the network to meet public safety requirements. This investment, in coordination with the investment in rural buildout, will ensure that the rollout of 4G in rural areas serves the needs of public safety and the broader community.
- **Cut the deficit by \$9.6 billion over the next decade.** The President's proposals to auction off spectrum freed up from the government and voluntarily relinquished by current commercial users, is estimated to raise \$27.8 billion. This total is above-and-beyond the auction proceeds that are used to provide an incentive for private and government users as well as the auction proceeds that are expected even absent the President's proposal. After the cost of the investments proposed by the President, the initiative would reduce the deficit by \$9.6 billion over the next decade.

Building on Progress

The Administration has already made progress on its decade-long spectrum goal and on expanding broadband access.

- A 115 MHz downpayment on the President's 500 MHz goal. Last June, President Obama issued a Memorandum calling for action by the Federal government and Congress to enable large swaths of spectrum to be used more efficiently. The NTIA has already taken steps to make good on that commitment. In particular, the agency has identified 115 Megahertz of Federal spectrum that can be freed up as part of a "fast track" process for exclusive or shared use, selected another 95 MHz of valuable spectrum for immediate evaluation, and has a workplan for evaluating other Federal spectrum bands that can be used more efficiently.
- Recovery Act investments by the Commerce and Agriculture Departments have boosted deployment and adoption of broadband technology. The Recovery Act provided around \$7 billion to expand broadband access and adoption, with more than \$2.5 billion going to the Rural Utility Service at Agriculture for rural areas and \$4.4 billion going to National Telecommunications and Information Administration at Commerce to

support a number of broadband initiatives. In particular, NTIA provided around \$400 million in grants to jurisdictions using wireless broadband for public safety.

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Proposed Rule Codifying the No Barriers Policy

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE

Subpart A – General Information

Section 54.7 is amended by redesignating the existing provisions of Section 54.7 as paragraph (a) of Section 54.7, and by adding paragraph (b) to read as follows:

§ 54.7 Intended use of federal universal service support.

(a) * * * [unchanged]

(b) The use of federal universal service support that is authorized by paragraph (a) shall include investments in plant that can, either as built or with the addition of plant elements, when available, provide access to advanced services.

Explanation

The amendment to Section 54.7 of the Commission's Rules codifies a longstanding Commission decision that its existing universal service policies do not create barriers to the provision of access to advanced services. Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 96-45, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (paras. 194-201) (2001) ("*RTF Order*"). The proposed language of 54.7(b) is consistent with the FCC's core principle of competitive neutrality, in that any eligible telecommunications carrier, using any technology, is subject to the rule.

The Commission has held that its current support mechanisms inherently provide incentives for infrastructure investments necessary for providing access to advanced services. *Id.* "Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services." *Id.* at 11322 (para. 200). While existing support mechanisms do not *directly* support the provision of advanced services, the Commission has emphasized that "our policies do not impede the deployment of modern plant capable of providing access to advanced services." *Id.* Prudent carrier investment—aimed at deploying modern facilities to meet present and future needs—is eligible for universal service support pursuant to the Commission's policies. *Id.* These policies are codified in the proposed Section 54.7(b).

For the Commission's reference, a copy of the relevant text from the RTF Order is reproduced below:

H. Advanced Services

1. Background

194. Section 254(c) of the Act defines universal service as an "evolving level of telecommunications services that the Commission shall establish periodically[.]" [FN456] In 1997, based on consideration of the definitional criteria set forth in section 254(c) and the Joint Board's recommendations, the Commission designated nine "core" services that are eligible for universal service support: single-party service; voice grade access to the public switched telephone network; Dual Tone Multifrequency signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income consumers. [FN457]

195. The 1996 Act addresses advanced telecommunications and information services in sections 254(b) and 706. Section 254(b) establishes the universal service principles that access to such services should be provided in all regions of the Nation, and should be reasonably comparable in rural, insular, and high-cost areas to the access in urban areas. [FN458] Section 706 directs the Commission and the states to utilize various regulatory methods to "encourage deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans[.]" [FN459]

***11321** 196. The Rural Task Force recommended that the Joint Board review the definition of services that are supported by the federal universal service mechanisms. [FN460] It also recommended that the list of supported services "should evolve to include access to information services at a rate that is reasonably comparable to that provided in urban areas." [FN461]

197. In addition, the Rural Task Force stated that its recommendation to continue distributing support to rural carriers based on their embedded costs "inherently provides incentives for the infrastructure investments necessary for providing access to advanced services." [FN462] It recommended the adoption of a "no barriers to advanced services" policy for rural carriers, which it indicated would be comparable to that applied in connection with the forward-looking high-cost mechanism for non-rural carriers. [FN463] The Rural Task Force recommended that the "no barriers" policy incorporate the following general principles: (1) support should be provided for plant "that can, either as built or with the addition of plant elements, when available, provide

access to advanced services[;]" (2) "carriers should be encouraged by regulatory measures to remove infrastructure barriers relating to access to advanced services[;]" and (3) "[t]he federal universal service support fund should be sized so that it presents no barriers to investment in plant needed to provide access to advanced services." [FN464]

2. Discussion

198. The definition of universal service under section 254(c) of the Act is a matter currently pending before the Joint Board. The Commission asked the Joint Board to review the list of supported *11322 services and, if warranted, recommend modifications. [FN465] Among other things, the Commission asked the Joint Board to consider the record on requests to redefine voice grade access to ensure reasonable comparability of dial-up Internet access in urban and rural areas. [FN466] In accordance with section 254(c), the Commission will consider whether any modifications to the list of supported services are warranted after the Joint Board completes its review. [FN467]

199. We agree with the Rural Task Force that our universal service policies should not inadvertently create barriers to the provision of access to advanced services, and believe that our current universal service system does not create such barriers. [FN468] Initially, we emphasize that section 254(b) states that access to advanced services "should" be provided, and the Fifth Circuit has held that section 254(b) establishes "principles that the FCC should consider in developing its policies" rather than specific statutory commands. [FN469] As the Rural Task Force recognized, the Commission's existing high-cost loop support mechanism for rural carriers "inherently provides incentives for the infrastructure investments necessary for providing access to advanced services." [FN470]

200. Contrary to the arguments of some commenters, use of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." [FN471] The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. High-cost loop support is available to rural carriers "to maintain existing facilities and make prudent facility upgrades[.]" [FN472] Thus, although the high-cost loop support mechanism does not support the provision of advanced services, our policies do not impede the deployment of modern plant capable of providing access to advanced services. Rural carriers may consider both their present and future needs in determining what plant to deploy, knowing that prudent investment will be eligible for support. [FN473] The measures that we adopt

in this Order will increase incentives for carriers to modernize their plant by increasing the total amount of high-cost loop support available under the cap.

201. As we move forward in the future, we will consider ways to ensure that we do not create regulatory barriers to the deployment of advanced services. The principal thrust of the "no barriers" proposal appears to be that the Commission should require carriers to deploy plant capable of providing ***11323** access to advanced services, and encourage them to replace plant that cannot provide such access. [FN474] Moreover, we believe any specific policies we adopt in this area should apply uniformly to all local exchange carriers, rather than as part of a transitional high-cost support mechanism for rural carriers. [FN475] Therefore, we believe that the "no barriers" policy as specifically proposed by the Rural Task Force should be considered further in connection with our comprehensive review of the high-cost loop support mechanisms for rural and non-rural carriers. In accordance with our mandate under section 706, we will continue to examine whether deployment of advanced telecommunications capability to all Americans is progressing in a reasonable and timely manner, and to consider means by which we can stimulate the further deployment of access to advanced services. [FN476]