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*NOT ADMITTED IN VA

October 20, 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:

On behalf of the undersigned companies, we write concerning the ex parte letter filed by the Wireline Competition Bureau (“Bureau”) on the evening of October 19, 2011 (“Bureau Letter”), providing substantive information on the state of mobile wireless deployment in the United States. There is no indication that any other Commission bureau or office, including the Wireless Telecommunications Bureau, played any role in the wireless industry analysis, or in producing the letter.

The Bureau Letter was submitted less than 48 hours before the Commission’s Sunshine Period cuts off advocacy on universal service reform. Accordingly, even if the complete study results were provided, there would be no opportunity to develop a thorough and informed response, which the Commission should enable and expect when it conducts a notice and comment rulemaking proceeding in accordance with the Administrative Procedure Act (“APA”).

The Bureau’s unsupported claim, that the letter identifies “public information it may consider as part of this proceeding” in order to provide “additional transparency, over and above legal notice requirements,”¹ is objectionable. The letter’s timing, and its substance, leave the opposite impression. It was filed just before the commencement of the Sunshine period, it describes a vague process never before understood publicly, it concedes the use of unreliable data, it states extraordinarily vague support for the conclusions reached, and fails to provide the detailed results of the analysis. In sum, the Bureau Letter undermines fundamental tenets of administrative law and disserves the government transparency goals of this administration.

¹ See Bureau Letter at p. 1.

The Bureau Letter raises a number of questions and problems. Given the circumstances, we cannot be sure that the list below is exhaustive, or even fully accurate:

1. What is the Bureau Letter intended to accomplish? Is it intended to buttress a conclusion in the upcoming Order that high-cost support to competitive ETCs serving rural areas where mobile service is available only from a supported provider amounted to \$45 million in 2010? If so, such a conclusion (as we discuss below) would be suspect, given the Bureau's own caveats about the accuracy and reliability of its methodology, and would be untested, given the lack of any sufficient opportunity for interested parties to review and comment on the Bureau's methodology and analysis.
2. How was the methodology developed? Were outside contractors employed in the process, and if so, who are they?
3. The Bureau Letter states that the staff has determined "on a census block by census block basis, the number of unique small and regional wireless competitive ETCs with coverage." This is no small task, especially given that there are over 8 million census blocks in the U.S. How long has the Commission been conducting this analysis and why was the public not informed before now, or given an opportunity to participate in the process?
4. How does the timing of this submission, coming less than 48 hours before the Sunshine Period, comport with the Chairman's commitment to fact-based, data driven rulemaking that provides all parties with adequate notice and a fair opportunity to participate fully in the rulemaking process?
5. How does this filing comply with the President's Executive Order 13563 (Jan. 18, 2011)? Specifically:

Sec. 2. Public Participation. (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

6. The \$45 million dollar figure in the Bureau Letter represents the total support received by wireless ETCs based on the number of customers in areas that historically have had service. It is incorrect to say that the amount of support generated by a particular area equals the amount of support that is sufficient to meet the service requirements of Sections 214 and 254 of the Act. The Bureau Letter conclusion does not explain the

amount of support needed for wireless providers to (a) build out their networks to reach areas they do not currently serve; (b) maintain and operate network infrastructure that would be unsustainable in the absence of ongoing support; and (c) upgrade their networks to provide 4G service.

7. By omitting census blocks that are not served by any wireless provider at all – or, more precisely, census blocks whose centroid is not within the coverage area shown by American Roamer for any wireless provider – the analysis likely excludes study areas that have unserved areas that would properly be the target of Mobility Fund support.
8. The Bureau Letter refers to a methodology for a study it undertook to determine “the extent to which there are geographic areas where mobile service is available from only a wireless provider that receives high-cost support.”² However, the actual results of the study are not provided. Thus, for example, while the Bureau Letter mentions that Staff identified a set of “qualified Study Areas” in which at least one census block is served, those study areas are not identified. Nor does the Bureau Letter identify the 17 competitive ETCs Staff found to be serving the “qualified Study Areas”. Before making a decision on the appropriate size of the Mobility Fund, does the Commission intend to provide the public with an opportunity to review and provide comment on the Bureau’s methodology and the results of its analysis as required by the APA?
9. Did the Bureau develop a map with this project? Did the Bureau take into consideration how wireless networks are constructed and operated? That is, how is the data provided useful in identifying how much support is needed to construct, operate and maintain existing networks? To what extent can the data be used to evaluate the quality of coverage (*e.g.*, signal strength, outages, redundancy and back-up capabilities)? Did the Bureau take into consideration coverage provided by unsubsidized carriers who have collocated on towers that were constructed with USF support?
10. The Bureau’s explanation contains several caveats calling into question the reliability of its findings. How do these caveats affect the findings? What steps will the Commission take to evaluate the accuracy and reliability of the Bureau’s findings?
11. The document does not explain what conclusions it draws when, for example, a supported carrier provides mobile service in an area with 30 cell sites, but its unsupported competition provides service in the same area with a total of 10 cell sites.
12. The document provides no information about what data the Commission looked at to determine where there is no service, or where there are significant dead zones within an existing coverage area. Does the Commission intend for this study to conclude that high-quality mobile wireless service is being provided by carriers in all other areas?

² Bureau Letter at p 1.

13. The USAC-provided list of wireless ETCs attached to the Bureau Letter includes entities that were acquired or merged into other entities, in some cases several years ago. The list therefore contains many duplicative entries that suggest overlapping coverage where there is none.
14. The Bureau's analysis completely ignores that in rural America, there is virtually no mobile broadband service at the 4/1 speed recommended in the National Broadband Plan from any carrier, nor does it examine the cost of providing such service. There is nothing indicating how the study compares to the analysis submitted by CTIA estimating approximately \$20 billion will be needed to construct high-quality mobile broadband networks in rural America.
15. If the Bureau Letter purports to conclude that it is much more efficient to provide mobile broadband throughout rural America, then surely the Commission must examine why it should spend \$4.2 billion per year, \$42 billion over a decade, to provide fixed broadband service in these same areas. (This level of funding for fixed broadband would result if the Commission were to adopt the ABC Plan and the RLEC Plan.)
16. The Bureau Letter provides no evidence, nor could it, as to whether mobile services in any rural area are of sufficient quality to enable the Commission to conclude that rural consumers have access to reasonably comparable services as are available in urban areas, as required by Section 254(b)(3) of the Communications Act.
17. The Bureau Letter does not take into account the effect of having both CDMA and GSM networks in rural America. For example, a rural consumer with a GSM phone cannot roam on a CDMA network, nor can she switch easily to a CDMA phone without risking early termination fees and the need to purchase a new device. Families need to migrate multiple devices, which multiplies the problem. In the 4G world, the lack of interoperability will bring the same issues, making it imperative that more than one carrier provide service in many if not most rural areas.

In the absence of an opportunity to review the underlying materials, this list is the best we can do at this time. We suspect a full examination will reveal additional problems.

With respect to the procedural and fairness concerns raised by the Bureau Letter, unfortunately this cannot be regarded as an isolated instance. After publishing a Notice of Proposed Rulemaking in early 2011, the Commission received three different reform proposals, one within the past 90 days. Each of these plans purports to overhaul universal service and intercarrier compensation, the most complicated issues the Commission has undertaken in a decade. Yet, these proposals present little more than a summary of proposed reforms.

Instead of publishing a public notice that tells the public what the Commission is going to do with the three proposals, the Commission simply asked for comment on them. If the Commission intends to adopt significant portions of the three proposals, then it should have

published a notice announcing what it proposes to do, so that the public could provide meaningful comment.

Now just a week before the Commission's scheduled meeting to address universal service reform, proposed rules have not been published by the Commission. Our best guess as to what is about to happen comes from ex parte meetings with Commission staff, who are not authorized to tell us all of the specifics of what is in the draft order that has just circulated at the Commission. We have learned that it is hundreds of pages in length; we have some directional clues, and statements that some issues remain undecided, but the public has been given no realistic opportunity to review and comment on concrete and specific Commission proposals for reform.

We understand that a revised draft of the order was due to circulate last week, but that hasn't happened. We understand that a revised draft may circulate this weekend, after the Sunshine Period has closed. As a result, the public has no opportunity to even understand what is in the revised draft order, much less engage in the kind of advocacy and public participation required by the APA and affirmed by the President's Executive Order.

It is time for the Commission to operate within the statutes Congress enacted to govern agency rulemakings. The procedures employed to date will treat industry to a regulatory surprise when the order issues. Accordingly, we urge the Commission to postpone consideration of this item at its October 27 meeting and employ the kind of transparent processes required by the APA, so that all interested parties can have a fair opportunity to advocate effectively.

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

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Commnet Wireless, LLC
C Spire Wireless
MTPCS, LLC d/b/a Cellular One
NE Colorado Cellular, Inc., d/b/a Viaero Wireless
Nex-Tech Wireless, LLC
PR Wireless d/b/a Open Mobile
United States Cellular Corporation



By: _____
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Their Counsel