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October 20, 2011

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*Re: FCC WT Docket No. 10-90 –*
*Universal Service / Intercarrer Compensation Reform*

Dear Mr. Spellmeyer:

You have requested that I review the October 19, 2011 *ex parte* submission in the above-referenced docket made by Jennifer Prime, Legal Counsel in the FCC's Wireline Competition Bureau ("WCB Letter"), and provide you with an analysis of its content. The comments and analysis presented herein are necessarily high-level and limited, due to the extremely short time available prior to the onset of the Sunshine Period which, I understand, will commence tomorrow.

The nominal purposes of the WCB Letter, as stated therein, are to "provide[] a list of publicly available information the Commission may consider as part of this proceeding" together with "a summary of staff analysis of areas where mobile service is available only from a small or regional provider receiving high-cost support." The WCB Letter and the two appendices attached thereto are entirely silent as to the specific evidentiary purpose or point of the proffered "analysis of areas where mobile service is available only from a small or regional provider receiving high-cost support" or its specific relationship to any of the issues under consideration in this proceeding. The opening sentence of Appendix II explains that "Commission staff performed an analysis to determine the extent to which there are geographic areas where mobile service is available only from a wireless provider that receives high-cost support" but then goes on to restrict its analysis to situations in which "the only mobile service is provided by small or regional wireless competitive eligible telecommunications carriers (ETCs)" but only in those

"areas not served by an unsubsidized mobile provider."[1] Appendix II provides a high-level description of the analysis methodology utilized by the Commission staff, including references to certain data sources that were relied upon. However, no quantitative details of the analysis are offered, and it is not possible to independently replicate or verify any of the staff's conclusions.

Two of the data sources cited in Appendix II are the "Tele Atlas Database" and "American Roamer CoverageRight," the latter as of October 2010. Appendix I to the WCB Letter "provides a list of publicly available information the Commission may consider as part of this proceeding." Conspicuous in their absence from this list are the "Tele Atlas Database" and "American Roamer CoverageRight" sources that were explicitly relied upon by the staff in preparing the analysis described in Appendix II. This is because, as it happens, *neither of these two data sources are "publicly available."* Both are proprietary databases for which license fees and various use restrictions apply.[2] The WCB Letter provides no details as to how these sources became available to staff or how they might be made available to interested parties seeking to replicate or verify the staff's conclusions. More importantly, other than high-level general references to these sources, there is no indication as to precisely which specific data elements were actually extracted and relied upon by the staff in performing its analysis, how that data was acquired by the third-party proprietary data source compilers, or any specific assumptions, limitations or other caveats applicable to their use. Indeed, while offering this "analysis" to the Commission for some unspecified purpose, the staff readily concedes the data's fundamental imprecision:

> ... as the Commission has noted in the past, our analysis of mobile network coverage based on coverage maps provided by American Roamer likely overstates the coverage actually experienced by consumers, because American Roamer reports advertised coverage as reported to it by many mobile wireless service providers, each of which uses a different definition or determination of coverage. Thus, there may be areas reported by American Roamer as served by a nationwide provider or an unsubsidized wireless provider that may not in fact be covered by those providers, but only by a small or regional competitive ETC. And, similarly, there may be areas reported by American Roamer as served by a small or regional competitive ETC where that provider does not actually provide service.

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1. WCB Letter Appendix II, at 1.

2. *Tele Atlas* is a company that provides digital maps and related mapping services. In 2008, Tele Atlas was purchased by TomTom, a Dutch company that manufactures GPS and other navigation systems. The Tele Atlas business continues as a subsidiary operation of TomTom (see, www.tomtom.com). *American Roamer* is a privately-held company specializing in wireless coverage products. It claims to have "...the largest wireless coverage database in the world." (See, www.americanroamer.com)

> In addition, we note that Tele Atlas boundaries may not be accurate in every instance, although we are not aware of any systematic bias that would impact the results of our analysis in one direction or another. In certain western states, for example, the Tele Atlas boundaries appear larger than those seen in other sources. This could increase the chance of finding a census block served only by funded small or regional competitive ETCs, creating upward bias in the results. However, because we cannot assess the inaccuracies in the Tele Atlas boundaries in a comprehensive way, it is impossible to determine the overall direction of their impact.[3]

Staff's concern that "coverage maps provided by American Roamer likely overstate[] the coverage actually experienced by consumers, because American Roamer reports advertised coverage as reported to it by many mobile wireless service providers, each of which uses a different definition or determination of coverage" are in fact well-founded. Public filings made by the two largest national wireless carriers indicate that they do, in fact, explicitly view their coverage areas expansively, well beyond the bounds of their actual facilities-based network footprint. In the last public annual report filed by Cellco Partnership (d/b/a Verizon Wireless) for year end 2009, the company noted that:

> Our network is among the largest in the United States, with licensed and operational coverage in all of the top 100 most populous U.S. metropolitan areas. Our network covers a population of approximately 290 million and provides service to our customer base of nearly 91.2 million as of December 31, 2009. In addition, *we have roaming agreements with a number of wireless service providers to enable our customers to receive wireless service in virtually all other areas in the United States where wireless service is available*. These wireless service providers include US Cellular and Sprint Nextel, upon which we principally rely for coverage in those portions of our calling area not covered by our network.[4]

AT&T Inc. does not discuss its Mobility subsidiary at the same level of detail as Verizon, but the last annual report filed by Cingular Wireless (AT&T Mobility's predecessor) highlights that it too takes an overly expansive view of coverage:

> We supplement our own networks with roaming agreements that allow our subscribers to use other providers' wireless services in regions where we do not have network coverage. *We refer to the area covered by our network "footprint" and roaming agreements as our coverage area.*[5]

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3. WCB Letter Appendix II, at 6, citations omitted.

4. Cellco Partnership 2009 Form 10-K filed March 12, 2010, at 9, emphasis supplied,

5. Cingular Wireless LLC 2005 Form 10-K, filed February 24, 2006, at 2, emphasis supplied.

It is very likely that the two largest carriers in the US report "coverage" in many of the areas that the staff seeks to identify in its current inquiry when, in reality, that "coverage" involves the use of other carriers' networks. Such other carriers might well be the only (facilities-based) provider available in a given service area, but the staff may have concluded otherwise by virtue of that same area being identified as falling within the "coverage area" of another provider.[6]

The numerous data deficiencies notwithstanding, the staff analysis seems largely inapposite to the issues before the Commission in this proceeding:

- The NPRM addresses the amount of funding that will be made available annually to support the provision of wireless *broadband* services. The "[s]upport disbursed to the 17 competitive ETCs identified in [Appendix II item] 3.b. in the qualified Study Areas" is associated with conventional wireless *voice* service, *not broadband*. Since the specific goal of this proceeding is to shift high-cost support away from voice and over to broadband, there is no basis for any extrapolation to be made from the support currently being provided for wireless voice services to the support that will be required for wireless broadband.

- Along the same lines, the staff's identification of "areas where mobile service is available only from a small or regional provider receiving high-cost support" is necessarily limited to the present existence of conventional wireless *voice* services. Even if the areas identified by the staff as satisfying this specific criterion are accurate – and there is no evidentiary demonstration that this is even the case – there is no basis for any extrapolation of that which exists today with respect to mobile *voice* services to the conditions that would prevail at some future time as to the availability of mobile *broadband* services.

- Staff has expressly *excluded* competitive ETCs owned by the four nationwide mobile service providers (AT&T, Verizon Wireless, T-Mobile, and Sprint). No explanation for this exclusion is provided. Inasmuch as the proposed Mobility Fund would be available to these four nationwide wireless providers as well as to smaller regional carriers, whatever purpose is intended for the staff's analysis of existing support levels, the large nationwide firms should not have been excluded.

- Staff claims that its analysis is limited to "areas not served by an unsubsidized mobile provider where the only mobile service is provided by small or regional wireless competitive eligible telecommunications carriers (ETCs)." It would appear that the presence of "an unsubsidized mobile provider" is determined as of the present time frame,

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6. Staff's use of third-party secondary data sources to identify coverage areas is certainly curious, inasmuch as FCC cell site and licensing data could also have been used for this purpose. Use of these primary data sources could have avoided the problem of confusing on-net and off-net (roaming) areas that a carrier may collectively identify to its customers as its primary coverage area.

rather than as of the date at which the support recipient had initially built out its network. Under the ABC Plan as proposed by the large price cap ILECs, the test for the presence of "an unsubsidized mobile provider" is to be as of a date certain – January 1, 2012 in this case – and once the determination that there is no "unsubsidized mobile provider" present in a Study Area as of that date has been made, support would be provided for a minimum of ten years *even if an unsubsidized provider arrives on the following day* – i.e., on January 2, 2012. Clearly, for whatever purposes this analysis is being offered, the determination as to the absence of an unsubsidized provider serving the subject study area should have been made as of the date that eligibility for support had been determined, not as of the present time.

- According to the description provided in Appendix II, only 17 qualifying competitive ETCs were identified based upon the exclusion criteria that had been used (i.e., small regional providers only, no unsubsidized provider serving the same area as of the study date) that in total had received $45-million in support in 2010.[7] No details as to how these 17 competitive ETCs were determined as satisfying the staff's criteria are provided, nor are the specific 17 anywhere identified. According to data available from the Universal Service Administrative Company (USAC), some $282.9-million in high-cost support was distributed to wireless competitive ETCs in the first quarter of 2011, representing an annual support level of roughly $1.13-billion.[8] Appendix II identifies 370 wireless CETCs that receive high-cost support. There is no explanation for, or documentation as to the mammoth gap between the total annual wireless CETC support level ($1.13-billion) and the $45-million as determined to qualify under the staff's criteria, nor for the gap between the 370 supported study areas identified in Appendix II and the 17 that purportedly satisfy the staff's screening.

- Under existing high-cost support practices, the funding available to wireless CETCs is based upon the level of support being provided to rural ILECs for the provision of voice telephone services. There is no basis for extrapolating the level of support that would be required to satisfy the Commission's broadband availability goals from amounts that are derived from rural ILEC voice support payments.

If it is the Bureau's intention that some inference be drawn as between what its staff's analysis determined to be the existing level of wireless high-cost support ($45-million) and the various support levels that have been proposed for the broadband Mobility Fund, the staff's analysis is on its face devoid of relevance. It applies eligibility criteria that are not remotely

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7. WCB Letter Appendix II, at 5.

8. http://www.usac.org/about/governance/fcc-filings/ , Quarterly Administrative Filings to the FCC, Appendix HC01.

comparable to those being proposed for wireless broadband support, and fails entirely to demonstrate any comparability as between the voice telephony support level upon which the staff's $45-million figure is based and whatever amount would be necessary to achieve the Commission's overarching broadband availability objectives.

Sincerely,