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March 13, 2012

ARTHUR BLOOSTON
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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: **Connect America Fund, WC Docket No. 10-90**
A National Broadband Plan for Our Future, GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers,
WC Docket No. 07-135
High-Cost Universal Service Support, WC Docket No. 05-337
Developing a Unified Intercarrier Compensation Regime,
CC Docket No. 01-92
Federal-State Joint Board on Universal Service, CC Docket No. 96-45
Lifeline and Link-Up, WC Docket No. 03-109
Universal Service Reform – Mobility Fund, WT Docket No. 10-208
EX PARTE PRESENTATION

Dear Ms. Dortch:

Townes Telecommunications, Inc., (“Townes”) by its attorneys, hereby submits this written ex parte communication in connection with the above-referenced proceedings. Townes has filed a petition for reconsideration urging the Commission to adopt the Mobility Fund eligibility rules to include an “access to spectrum” requirement which ensures that carriers will be able to take advantage of technologies that employ unlicensed spectrum to provide 3G or better wireless services; specifically, where an entity plans to provide service using unlicensed spectrum, the Commission must make clear that no Commission authorization is necessary.

Townes hereby reiterates this request, and urges the Commission to apply the same rule change to both phases of the Mobility Fund support program.

In its *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, released November 18, 2011 (“*Order and FNPRM*”),¹ the Commission proposed to require parties seeking Mobility Fund Phase II support to satisfy the same eligibility requirements that it adopted with respect to Phase I.² One such requirement is that entities must hold, or otherwise have access to, a Commission authorization to provide service in a frequency band that can support 3G or better services.³

On December 29, 2011, Townes submitted a Petition for Clarification or Partial Reconsideration⁴ of the Mobility Fund portion of the *Order and FNPRM*, demonstrating that the Commission should clarify the “spectrum availability” requirement, to ensure that rural carriers are able to take advantage of technologies that employ unlicensed spectrum to provide 3G or better wireless services. As Townes pointed out, there is language in the Order that could be interpreted as requiring a Mobility Fund applicant to either hold a spectrum license or have a signed spectrum lease in hand, and that penalties may apply to Mobility Fund applicants that are found to have failed the “spectrum availability” requirement.⁵ However, a carrier seeking to take advantage of technologies such as the xMax™ cognitive radio technology developed by xG Technology would not require a spectrum license to operate.

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund*; Report and Order and Further Notice of Proposed Rulemaking, WC Dockets No. 10-90, 07-135, 05-337, 03-109; CC Dockets No. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, released November 18, 2011, (*Order and FNPRM*).

² *Id.* at ¶1140.

³ *Order and FNPRM* at ¶399.

⁴ Petition for Clarification or Partial Reconsideration of Townes Telecommunications, Inc., WC Docket No. 10-90, et al., filed December 29, 2011 (“Petition”). A copy of the Petition is attached hereto for your convenience.

⁵ Petition at p. 5.

The Commission clearly contemplates the use of unlicensed operations in its *Order and FNPRM* to meet Connect America Fund and Mobility Fund goals. On more than one occasion it defines terrestrial fixed broadband service as, “one that serves end users primarily at fixed endpoints using stationary equipment, such as the modem that connects an end user’s home router, computer or other Internet access device to the network. This term includes fixed wireless broadband services **(including those offered over unlicensed spectrum)**.”⁶

Accordingly, Townes urges the Commission to make sure that this uncertainty from the Mobility Phase I rules is corrected as requested in the Townes Petition, and that the corrected spectrum availability requirement be applied to Mobility Phase II as well. In its final rules regarding Mobility Phase II, the Commission must make clear that the “spectrum availability” requirement is either inapplicable, or will be considered satisfied, where a carrier plans to provide service using technology that can achieve 3G or better service using unlicensed spectrum.

Respectfully submitted,

s/ Harold Mordkofsky

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⁶ See, e.g., *Order and FNPRM* at ¶98 (emphasis supplied); fn 169; see also ¶533 (discussing unlicensed wireless in the context of the Remote Areas fund).