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202-654-5900

March 15, 2012

**Via ECFS**

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

Re: Notice of Ex Parte Presentation – WC Docket Nos. 10-90, 05-337; WT Docket No. 10-208; CC Docket No. 96-45; T-Mobile USA, Inc.  
Petition for Reconsideration or Clarification of CETC Support Baseline

Dear Ms. Dortch:

On March 13, 2012, T-Mobile USA, Inc. (“T-Mobile”) met with Commission staff to discuss its petition for reconsideration or clarification of one aspect of the *USF-ICC Transformation Order*<sup>1</sup>– the rule for the calculation of the baseline for the phase-down of competitive eligible telecommunications carrier (“CETC”) support.<sup>2</sup> In the meeting, T-Mobile was represented by Luisa Lancetti, Dave Conn, Indra Chalk, and outside counsel Charles Keller of Wilkinson Barker Knauer, LLP. We met with Carol Matthey, Patrick Halley, Amy Bender, and Theodore Burmeister of the Wireline Competition Bureau and Erik Salovaara of the Wireless Telecommunications Bureau.

The attached presentation formed the basis of T-Mobile’s presentation and was distributed to the meeting attendees.<sup>3</sup>

In response to an inquiry in the meeting, T-Mobile also provides in this filing some additional information regarding its petition for ETC designation in Georgia. A chronology of salient dates in the Georgia proceeding is attached.<sup>4</sup> As that chronology reveals, T-Mobile filed its application for ETC status in Georgia on November 16, 2010, approximately a year before the release of the *USF-ICC Transformation Order*. The Georgia Public Service Commission granted T-Mobile’s ETC designation on February 10, 2012, but with an effective date of

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<sup>1</sup> *Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF-ICC Transformation Order*”).

<sup>2</sup> T-Mobile USA, Inc., Petition for Reconsideration of Clarification, WC Docket Nos. 10-90 *et al.* (filed Dec. 29, 2011) (“T-Mobile Petition”).

<sup>3</sup> See Attachment 1.

<sup>4</sup> See Attachment 2.

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November 17, 2011. This date was selected because it had been the hearing date in the proceeding (a date that was set in a procedural order released on September 13, 2011<sup>5</sup>).

In the meeting, the staff also asked T-Mobile to provide the number of lines that it has reported to USAC, by ILEC study area, in the affected states. T-Mobile is compiling this information and will provide it in a forthcoming filing that will be filed promptly.

Please direct any questions regarding this filing to the undersigned.

Sincerely,

/s/

Luisa L. Lancetti

Attachments (3)

cc (email): Carol Matthey  
Patrick Halley  
Amy Bender  
Theodore Burmeister  
Erik Salovaara

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<sup>5</sup> See Attachment 3.

## **Attachment 1**

# T-Mobile's Petition For Reconsideration or Clarification on the Baseline Calculation for CETC Support

March 13, 2012



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# The Baseline Calculation Rule - Starting Point for Phase Down

- The USF/ICC Transformation Order sought to phase down CETC support “gradual[ly]” from the level of “existing support” “as of year end 2011” to avoid negative impacts to service providers that could result in service disruptions to consumers.
- The Order intended a monthly baseline measure providing “a reasonable approximation of the amount that [CETCs] would currently expect to receive,” “had we retained the identical support rule going forward.”
- Rule 54.307(e)(1), promulgated pursuant to the Order, however, conflicts with the Order by requiring CETCs to calculate support by dividing their total high-cost support for 2011 by 12, regardless of the number of months the CETC was designated as an ETC during 2012.
- The Commission should amend or clarify the baseline calculation rule to ensure that similarly situated CETCs are treated the same during the phase down of USF support.

# ETC Designations and Pending Applications

- This is not just a theoretical concern for T-Mobile and its customers.
  - Four T-Mobile ETC applications were granted in 2011 (Hawaii, Idaho, Minnesota, and Louisiana).
  - Georgia was granted in February 2012, effective as of November 17, 2011.
  - T-Mobile has had applications pending in Arizona, Mississippi, and Oregon since before adoption of the Order.

# Negative Effects of The Rule

- Rather than a gradual phase down in support, the rule will result in a precipitous reduction in support amounts for carriers designated in 2011 and for those with CETC petitions pending in 2011 but designated in 2012.
- This drastic reduction in support:
  - will undermine T-Mobile's ETC service commitments to state commissions and slow deployment of new wireless network infrastructure in rural areas,
  - unfairly discriminates among CETCs based on factors beyond their control, and
  - violates section 254(b) USF principles.

# The Rule Threatens Build Out and Services

- T-Mobile's ETC designations are based on state commission findings that it would use support to build out its network in rural areas for the benefit of consumers, and it has made similar showings in its pending ETC applications.
  - Without the level of phase-down support that other CETCs receive, T-Mobile cannot reasonably be expected to meet the same service and build-out commitments it previously made.
  - Reduction or elimination of T-Mobile's phase-down support would threaten the planned build-out of rural cell sites and undermine the expectations of rural consumers for new affordable mobile services.

# The Rule Unfairly Discriminates

- The rule imposes a much steeper phase down on CETCs designated after 2010 than on those designated in or before 2010, leaving the former with significantly less support during the entire phase down than the latter, similarly situated carriers.
- It would be unfair to discriminate in this way against those CETCs that applied in good faith for CETC status prior to the release of the Order.

# The Rule Violates USF Principles

- Section 254(b)(5) of the Communications Act of 1934 requires universal service support to be “specific, predictable, and sufficient.”
  - The reduction in high-cost support required by the rule is abrupt and arbitrary and violates this principle.
  - The amount of the reduction varies depending on when in 2011 a carrier was designated as an ETC. Because of the vagaries of the state processes, this date is entirely unpredictable.
  - Carriers designated as ETCs in 2011 had no prior notice they would be subject to this disparate treatment.
  - The resulting reductions in support are so steep that funding is not adequate to achieve the goals of the universal service program and is, therefore, not sufficient.

# Requested Relief

- T-Mobile requests the same phase down from its monthly support for 2011 that the Order provides to all other CETCs – a steady 20% reduction per year, starting July 1, 2012.
- Total support received in 2011 should be divided by the number of months in 2011 for which a CETC received support, rather than by 12.
- Or, if a CETC receives no support for 2011, monthly baseline support should be based on the average monthly high-cost support it would have received in 2011 if it had been a CETC and received support for 2011 under the prior rules.

# No Effect on Total CETC Support

- Conforming the rule to the intent of the Order will not increase the total amount of CETC support for 2011 to be used in deriving the total CETC baseline amount, which is limited to a fixed amount by the 2008 Interim CETC Cap Order.
- Opponents' complaints are untimely challenges to the CETC Cap, which contemplated the grant of additional CETC applications and corresponding reductions in existing CETCs' support, and collateral attacks on T-Mobile's state ETC designation orders, which were based on public interest findings.

## **Attachment 2**

T-Mobile South LLC  
 Georgia ETC Petition  
 (Georgia PSC Docket No. 32967)

**Timeline of Proceeding**

11/16/2010	T-Mobile files ETC designation petition with Georgia PSC.
12/2010	Interventions filed.
12/2010 – 06/2010	T-Mobile contacts PSC on several occasions to urge progress on processing the petition.
06/2011	Intervenors advise T-Mobile they intend to request a hearing (unusual in ETC proceedings in GA).
07-08/2011	T-Mobile contacts PSC to discuss procedural schedule; expresses view that hearing is unwarranted.
08/16/2011	Intervenor/opponents file proposed scheduling order calling for hearing on 1/17/2012.
08/25/2011	T-Mobile files proposed scheduling order opposing need for hearing, but requesting that any hearing be set on 10/18/2011 or as soon as possible.
09/13/2011	Georgia PSC issues procedural schedule (See Attachment 3).
10/07/2011	Direct testimony filed.
10/21/2011	Rebuttal testimony filed.
11/17/2011	Hearing date.
12/02/2011	Briefs and proposed orders filed.
02/02/2012	PSC Staff presents recommendation (proposing grant).
02/03/2012	T-Mobile files letter requesting effective date as of hearing based on PSC delays in processing petition.
02/10/2012	PSC administrative session; T-Mobile's application approved on voice vote. Effective date of 11/17/2011 (hearing date) proposed on motion by Comr. Eaton based on PSC's delays in processing T-Mobile's petition. The motion carried.

## **Attachment 3**

COMMISSIONERS:

STAN WISE, CHAIRMAN  
CHUCK EATON  
TIM G. ECHOLS  
H. DOUG EVERETT  
LAUREN "BUBBA" McDONALD, JR.

FILED

SEP 13 2011

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Georgia Public Service Commission

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244 WASHINGTON STREET, S.W.  
ATLANTA, GEORGIA 30334-5701

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Docket No. 32967

In Re: Application of T-Mobile South LLC for Designation as an Eligible  
Telecommunications Carrier in the State of Georgia

PROCEDURAL AND SCHEDULING ORDER

I. BACKGROUND

On November 16, 2010, T-Mobile South LLC ("T-Mobile") filed with the Georgia Public Service Commission an Application for Designation as an Eligible Telecommunications Carrier ("ETC") in Georgia. Georgia RSA #8 Partnership ("Georgia RSA #8"), SouthernLINC Wireless ("SouthernLINC"), and Public Service Telephone Company ("PSTC") filed petitions for leave for intervene.

On August 16, 2011, Georgia RSA #8 and SouthernLINC filed a Motion for Entry of a Procedural and Scheduling Order. The intervenors' proposed schedule grants discovery rights to all parties in the docket and calls for a hearing to be held January 17, 2012.

PSTC filed comments on the motion on August 24. PSTC did not oppose the schedule but did oppose discovery rights for the parties.

On August 25, 2011, T-Mobile filed a response to the intervenors' proposed schedule. T-Mobile opposed the parties' request for a hearing, but provided alternative dates should the Commission elect to have a hearing. T-Mobile proposed a more expedited schedule than the intervenors, requesting that the hearing be held on October 18, 2011 or as soon thereafter as possible. T-Mobile opposed the intervenors' request for discovery rights.

The Staff recommended that the Commission hold a hearing on T-Mobile's application. However, the Staff recommended that the Commission not grant discovery to any intervening party.

An original and fifteen copies of all filings, including testimony, briefs and proposed orders, shall be accompanied by an electronic version of the filing that shall be made on a CD

using Microsoft Word ® format for text documents and Microsoft Excel ® for spread sheets. Under no circumstances should any electronic filing consist of more than four (4) files, including attachments. This filing shall be made at the office of the Executive Secretary, Georgia Public Service Commission, 244 Washington St., SW, Atlanta, Georgia 30334-5701.

## **II. PROCEDURAL SCHEDULE**

September 13, 2011

A joint issues list shall be filed with the Commission by 4:00 p.m.

October 7, 2011

All direct testimony shall be filed with the Commission by 4:00 p.m.

October 21, 2011

All rebuttal testimony shall be filed with the Commission by 4:00 p.m.

November 17, 2011

**Beginning at 10:00 a.m. on November 17, the Commission will convene the hearings.**

The Commission will begin by receiving the testimony of any public witnesses pursuant to O.C.G.A. § 46-2-59(g). Immediately following public witnesses, the Commission will hear applications to intervene and any objections thereto, and any motions concerning the parties' pre-filed testimony and other appropriate motions. Following these preliminary matters, the Commission will conduct hearings on the pre-filed testimony. The hearing shall take place in the Commission's hearing room located on the first floor of 244 Washington Street, SW, Atlanta, Georgia 30334-5701.

December 2, 2011

All briefs and proposed Orders are to be filed with the Commission by 4:00 p.m.

## **III. LEGAL AUTHORITY AND JURISDICTION**

The Commission has general supervisory authority over telephone companies. O.C.G.A. §§ 46-2-20 and 21. The Commission has authority over telecommunications companies pursuant to the Telecommunications Act, O.C.G.A. § 46-5-160 through 174. Under federal law, subject to making the necessary findings, states are authorized to designate telecommunications companies as ETCs. 47 U.S.C. § 214(e). The Commission is empowered under State law "to act in accordance with federal laws or regulations of the Federal Communications Commission. "

#### **IV. STATUTES INVOLVED**

##### **Federal Statutes**

47 U.S.C. 254(e) Provision of universal service.

This code section provides that a common carrier designated as an eligible telecommunications carrier under paragraphs (2), (3), or (6) of section (e) shall be eligible to receive universal service support. The code section also describes the obligations of a carrier that has been designated as an ETC. In addition, the code section states the standards to be employed by a state commission in designating a carrier as an ETC in rural, non-rural and unserved areas. This code section also addresses the relinquishment of universal service by an ETC carrier. Further, the term "service area" is defined in the context of this code section. Finally, this code section addresses the role of the Federal Communications Commission in the designation of those common carriers providing services that are not subject to State jurisdiction.

##### **Federal Regulations**

47 C.F.R. 201 through 209

##### **Commission Utility Rules**

###### **515-2-1-.06 Parties of Record**

- (1) At the hearing on all applications, petitions and complaints, the Chairman of the Commission shall call for and enter the names of all parties desiring to become a party of record, either for or against the docketed case being heard. In the discretion of the Commission, parties having made written intervention prior to the hearing may be entered as a party of record.
- (2) The Commission may, in its discretion and for good cause shown, authorize the late filing, or entering, of a notice of intervention.
- (3) The Commission may, in its discretion, permit any person to present a statement of his position and views in sworn form, but such person shall not be entitled to receive copies of notices, motions, Orders or other pleadings and documents, filed or issued in the proceeding, unless otherwise directed by the Commission on good cause shown.

###### **515-2-1-.18 Service Objectives**

This rule establishes service objectives which should generally be provided by a utility.

## ISSUES INVOLVED

The Commission has directed the parties to submit a Joint Issues List by September 13. In the event that the parties are unable to reach agreement on the issues list, then the Commission will set the issues to be included in this docket.

## VI. INTERVENTION AND HEARING PROCEDURES

The following are certain procedures to which the parties should adhere with respect to this docket.

### A. Intervention

#### Intervention Period

(1) Any person or party that is not automatically a party to this case as set forth above, has not already petitioned for intervention in this case, or any party on whom a statute does not confer an unconditional right to intervene, must file an application for leave to intervene not later than thirty (30) days after the issuance of this Procedural and Scheduling Order.

#### Application Requirements

(2) Applications must clearly specify the docket in which the applicant seeks to intervene. In addition to the requirements prescribed by O.C.G.A. § 46-2-59 for applications for leave to intervene, the applicant must:

a. identify other intervening parties or intervening party applicants whose interest is similar to that of the applicant, along with an explanation of why the identified intervening parties or intervening party will not adequately represent the applicant's interest; and

b. state the applicant's present intention to submit testimony and by whom and on what subject. The requirements identified herein shall constitute obligation of the applicant or intervening party. Any objections to applications must be filed in conformance with O.C.G.A. § 46-2-59(d).

#### Late Applications for Intervention

(3) Any application for leave to intervene that is filed late must state the reason why such application was not timely submitted. Objections to late intervention application must be filed in conformance with the requirements of O.C.G.A. § 46-2-59(d).

## Rulings on Intervention Applications

(4) The Commission will take up and rule on applications for leave to intervene at the first hearing date set in this docket.

### B. Service

It shall be the responsibility of each party to serve copies of any documents filed with the Commission upon each party's representative, intervenor, and intervenor applicant. Furthermore, in the case of documents filed prior to the deadline for intervention established above, copies shall also be served upon each party of record recognized in Commission Docket No. 32235 according to the service list established in this docket. Electronic service upon other parties to the proceeding constitutes service.

Applications to intervene and Commission approval thereof are covered by O.C.G.A. § 46-2-59 and Commission Utility Rule 515-2-1-.06. Each applicant shall submit fifteen (15) copies of its application to intervene to the Commission along with an electronic version, addressed to:

Mr. Reece McAlister  
Executive Secretary  
Georgia Public Service Commission  
47 Trinity Avenue, SW  
Atlanta, GA 30334-5701

### C. Witnesses' Testimony

- (1) Summations of testimony will take no longer than 15 minutes or, at the discretion of the Commission, no longer than 30 minutes.
- (2) Summations should be limited to testimony and exhibits in the pre-filed testimony.
- (3) Demonstrative handouts intended to be used during summations of the pre-filed testimony or in opening or closing statements, if applicable, must be pre-filed at least five (5) days prior to the hearing and must be limited to the scope of the testimony and exhibits in the pre-filed testimony.
- (4) Except for good cause shown, corrections to testimony must be pre-filed at least five (5) days prior to the hearing.

(5) In the absence of a valid objection made and sustained to prefiled testimony, the prefiled testimony and exhibits, with corrections, will be admitted into the record as if orally given prior to the witness' summation, subject to a motion to strike after admission or other relevant objection.

(6) Where the testimony of a panel of witnesses is presented, cross-examination may either be addressed to the panel, in which case any member of the panel may answer, or cross-examination may be addressed to an individual panel member, in which case that panel member shall give the answer.

(7) Motions to strike any portion of pre-filed testimony must be filed at least two days prior to the hearing.

#### D. Hearing Exhibits

For the record in all hearings, it shall be the responsibility of the party sponsoring any exhibits to see that the Hearing Reporter and all parties of record, plus the Commissioners, receive copies of the hearing exhibits at the time of introducing the exhibits at the hearings.

### **VII. DISCOVERY**

This proceeding also shall be deemed "complex litigation" as that phrase is used in O.C.G.A. § 9-11-33(a). Discovery procedures shall accordingly apply. The Commission authorizes the Staff to issue discovery pursuant to O.C.G.A. 46-2-57(a). The Staff may conduct depositions and use any other methods of formal and informal discovery in this docket. The use of any informal discovery methods shall not augment or abridge existing discovery rights and responsibilities. Responses to Staff discovery should be provided contemporaneously to all parties. To the extent that such responses include information that an applicant deems trade secret, any disclosure of that information to other interested parties should be handled consistent with the Commission's trade secret rule and any confidentiality agreements that the applicant may have with the interested parties.

### **VIII. RIGHTS OF PARTIES**

The parties have the following rights in connection with this hearing:

- (1) To respond to the matters asserted in this document and to present evidence on any relevant issue;
- (2) To be represented by counsel at its expense;
- (3) To subpoena witnesses through the Commission by filing requests with the Executive Secretary of the Commission; and

- (4) Such other rights as are conferred by law and the rules and regulations of the Commission.

**WHEREFORE IT IS ORDERED**, that the Commission initiates this proceeding, subject to the conditions and procedures set forth herein.

**ORDERED FURTHER**, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

**ORDERED FURTHER**, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

**ORDERED FURTHER**, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 6<sup>th</sup> day of September, 2011.

  
\_\_\_\_\_  
Reece McAlister  
Executive Secretary

  
\_\_\_\_\_  
Stan Wise  
Chairman

9-13-11  
\_\_\_\_\_  
Date

9-13-11  
\_\_\_\_\_  
Date