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September 24, 2009

Attn: Darlene Standley
Chief – Utilities Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

RE: Docket No. 09-00096 – In Re: Docket to Study Merits of Rural Affordability Fund

Dear Ms. Standley

T-Mobile Central LLC and PowerTel/Memphis Inc. (collectively, "T-Mobile") hereby submit responses to the Tennessee Regulatory Authority's data request dated September 4, 2009 regarding the creation and implementation of a Tennessee Rural Affordability Fund. Attached please find an original and four (4) copies of T-Mobile's Comments. Please return a filed-stamped copy for T-Mobile's records in the attached self-addressed enveloped.

If you have any questions concerning this filing, please do not hesitate to contact me at the above noted number.

Regards,

Garnet M. Hanly

Garnet M. Hanly

BEFORE THE TENNESSEE REGULATORY AUTHORITY

OF THE STATE OF TENNESSEE

In Re:	)	
	)	Docket No. 09-00096
Docket to Study Merits of Rural Affordability Fund	)	
	)	Filed September 25, 2009

COMMENTS OF T-MOBILE

T-Mobile Central LLC and PowerTel/Memphis, Inc. (collectively, "T-Mobile") hereby submit these comments in response to the Tennessee Regulatory Authority's ("TRA's") data request dated September 4, 2009 ("Data Request") requesting comments from interested parties on legislation that calls for creation and implementation of a Tennessee Rural Affordability Fund ("TRAF"). T-Mobile, a commercial mobile radio service ("CMRS") provider offering advanced wireless products and services, fiercely competes among numerous intermodal competitors within the state of Tennessee. The presence of this significant intermodal competition will continue to ensure that basic service is available at affordable rates, which renders a state universal system as obsolete and unnecessary. As a result, T-Mobile does not support the creation of a TRAF, which will create an unnecessary surcharge on consumers' telephone bills. Before even considering creation of a TRAF, the TRA should closely examine market conditions, consumer preferences, usage characteristics, and financial results to determine whether it is necessary to create an additional source of subsidy to rural local exchange carriers ("RLECs"). These comments respond to the multiple questions posed by the TRS in the Data Request.

1. **Please discuss in detail the financial impact of reducing your company's access rates to the interstate level as proposed in the legislation.**

Under federal law, CMRS providers cannot require local exchange carriers ("LECs") to pay intrastate switched access rates.[1] However, wireless carriers are required to purchase monopoly switched access service for traffic originated by wireless providers that terminate to a LEC landline customer that cross Major Trading Area ("MTA") boundaries.[2]

2. **Please discuss the merits of the TRAF as proposed and any changes/modifications that you believe would be necessary in establishing this fund.**

The TRAF is unnecessary because affordable basic service is available throughout Tennessee in part as a result of the rise of intermodal competition throughout the state, including rural areas.[3] As an initial matter, any claim that a RLEC's ability to offer quality service at just and reasonable rates may be affected are just that – unsubstantiated claims. There is no evidence before the TRA or available to competing carriers to support these claims. As a matter of policy, every carrier should look primarily to its own customers to recover its costs (as happens in the wireless industry) rather than relying on either implicit or explicit subsidies funded by other carriers. This will result in less market distortion in the local service market, as well as in the other markets such as

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[1] *See Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Service,* 9 FCC Rcd 1411, ¶ 179 (1994); *see also Petition of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges,* 17 FCC Rcd 13192, ¶ 8 (2002) (holding that "CMRS access services are subject to mandatory detariffing, and it is therefore undisputed that Sprint PCS could not have imposed access charges on AT&T pursuant to any tariff.")

[2] The boundary lines of Tennessee contain at least four MTAs including: MTA 11 Atlanta, MTA 43 Nashville, MTA 44 Knoxville, MTA 28 Memphis-Jackson and MTA 29 Birmingham.

[3] Based on Federal Communications Commission *Local Telephone Competition: Status of June 30, 2008,* Table 13, (rel. July 23, 2009), there are at least 50 competitive local exchange carriers operating in the State of Tennessee.

wireless and long distance service. Indeed, the desire to minimize distortion in other markets is one of the prime justifications for the reduction of state access rates in the first place.

In addition, there should not be an assumption that a reduction in revenues from intrastate access services must necessarily be recovered through the imposition of a TRAF. Telecommunications providers in Tennessee, as elsewhere in the country, have many sources of revenue available to them because of the relationship that that they have with their customers. Carriers today are able to provide many services in addition to local voice services – long distance, broadband internet access, calling features, and video services, to name a few. In most of these cases, the revenue opportunity exists because of shared network that is used jointly to provide telecommunications and other services. These revenue opportunities were not generally available when the TRA first set intrastate switched access rates. Before setting up a market-distorting universal service fund, the TRA should first examine *all* revenue sources available to the RLECs, and determine whether collection of revenue from those other sources may make use of a TRAF unnecessary. If the RLECs are guaranteed a revenue stream through a government-mandated subsidy program like a TRAF, they will have less incentive either to operate more efficiently or to find the additional sources of revenue that will allow them to cover their costs. It would provide the RLECs better incentives to forego a fund and allow the RLECs either to provide services that customers want to buy from them or to operate more efficiently like most other sectors of the industry including the wireless industry are required to do.

Finally, the RLECs in Tennessee already receive significant levels of federal universal service support. As the TRA is aware, the FCC is currently reviewing numerous aspects of intercarrier compensation and the federal universal service fund, and may make substantial changes that will impact carriers (and regulators) in Tennessee.[4] Nonetheless, under the present federal program, as of the second quarter of 2009, RLECs in Tennessee were receiving an annualized total of over $50 million in federal high cost support.[5] Since the purpose of the federal universal service fund is to enable comparable rates across states, the federal fund should be sufficient to allow the Tennessee RLECs to charge reasonable rates.

3. What should be the determining factors and criteria in determining whether to establish a TRAF?

The TRA should assess a need for establishment of a fund before creating another government-mandated subsidy program. This calls for close review of a company's financial data for all services it offers using joint and common facilities before considering more subsidies to that company. It is essential for the TRA to consider that RLECs today offer a combination of services that are driving higher average revenue per user (ARPU). In today's market, most RLECs are capable of recovering the full costs of providing those services from its own end user customers.

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[4] *See generally,* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (ARRA); *See also, e.g., A National Broadband Plan for Our Future,* GN Docket No. 09-51, Notice of Inquiry (rel. April 8, 2009) ("*National Broadband Plan"*); *High-Cost Universal Service Support; Federal-State Joint Board for Universal Service,* WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-22 (rel. January 29, 2008) ("*Joint Board NPRM"*); *High–Cost Universal Service Support; Federal –State Joint Board on Universal Service,* WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-5 (rel. January 29, 2008) ("*Auctions Further NPRM"*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (rel. January 29, 2008) ("*Support Calculation NPRM"*).

[5] These figures are taken from table HC01, available on the website of the administrator of the federal universal service fund, the Universal Services Administrative Company, available online at http://www.usac.org/about/governance/fcc-filings/2009/quarter-2.aspx. This total does not include additional amounts received by the RLECs for other funds through the universal service program.

4. Please discuss whether prices and service offerings should be comparable between all rural and urban areas, and how this determination should be made?

Prices and service offerings should be comparable for the entire state to ensure that consumers throughout the state enjoy the benefits of competition in the telecommunications market.[6] "Comparable", however, does not necessarily mean "exactly the same." There are many cost-of-living factors that vary between urban and rural areas, with telecommunications pricing being only one. The totality of these factors should be considered in determining the "comparability" of rates.

5. Should the earnings of incumbent local exchange companies (ILECs) operating under rate-of-return regulation be examined prior to receiving TRAF funds?

The TRA must be able to examine the financial data of requesting incumbent local exchange carriers ("ILECs") in order to assess a need for additional funds. As noted above in the response to Question 1, when the state originally set forth intrastate switched access rates, ILECs were receiving revenue almost entirely from local exchange services and access services. Today there are numerous sources of revenue such as broadband and video services. The evolution of communications technologies and markets requires that the TRA reexamine the basic premises of traditional universal service policies, particularly since those policies were first established when local competition was not available or authorized by law. Because ILECs now offer multiple alternative services, including advanced services such as broadband, the TRA should view very skeptically any claims of universal service support needs, especially in light of the universal service support subsidies already flowing to Tennessee companies from the interstate

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[6] *See* T-Mobile's Response to Question 9 on why subsidized lower-than-market local exchange rates are harmful for consumers and competition.

jurisdiction, and the grant requests that several Tennessee entities have requested under the ARRA Broadband Technologies Opportunity Program ("BTOP") totaling approximately $183 million in funds to be invested in the State.[7] As a result, it is essential that the TRA examine the books of any ILEC requesting disbursement from a TRAF to assess need based on current revenues, the availability of additional revenues, and other subsidies it is receiving.

6. Should the TRAF target funds for expanding a recipient company's broadband deployment?

A TRAF should not be used to fund broadband deployment. It is unreasonable for competitors to finance the deployment of broadband, which is a highly competitive market. In a recent Federal Communications Commission report released in July 2009, it states that at least 72 carriers are offering broadband service throughout the State of Tennessee with speeds over 200 kbps in at least one direction.[8] Connected Tennessee, a Connected Nation nonprofit is focused on increasing deployment and adoption of broadband services. Within its eCommunity strategies team, it offers Tennessee communities with a tactical plan to address its own challenges related to technology growth and to bring broadband and technology in innovative ways.[9]

Furthermore, the federal government is currently reevaluating its federal universal service fund and is currently in the process of allocating millions into the State of

[7] *See* ARRA Section 6001.
[8] *See Federal Communications Commission Releases Final Data on High Speed Services Collected under the Previous Form 477 Framework,* Table 8 (rel. July 23, 2009) (statistics reflect data as of June 30, 2008).
[9] Additionally as recent as July 2009, Connected Tennessee noted that it reached a major milestone by donating its 1,600th computer as part of its two-year old Computers 4 kids program. *See* http://connectednation.org/in_the_news/the_blog/2009/05/connected-tennessee-connected-nation.php

Tennessee for broadband deployment.[10] T-Mobile believes that rural broadband deployment could be supported through the expansion of the federal Lifeline/Linkup program, by allowing Lifeline/LinkUp funds to be used to support low-income consumers' access to mobile broadband services in both urban and rural areas. The Lifeline/LinkUp Pilot Program would provide an efficient means of delivering broadband service to low income consumers and would be far more effective than creating a new subsidy flowing only to particular carriers in Tennessee.

7. Should the TRAF be expanded to replace other sources of implicit funding used to support universal service?

The TRAF should not be expanded to replace other sources of implicit funding. If this were to occur, the TRAF would be viewed as a permanent subsidy for the recipient RLECs with little or no correlation to the cost of providing telephone service.[11] Instead, the TRAF (if established) should be used only to support service to customers in areas where that service would not otherwise be available on an affordable basis; that is, it should be viewed as a fund to further the goal of universal service, and not as a fund to maintain existing revenue streams in the face of changing markets.

8. Should TRAF disbursements be portable to Eligible Telecommunications Carriers ("ETCs") for customers they service in these rural areas?

T-Mobile believes that there is no need to establish a TRAF; but if one is established, it must be available to all carriers on a technology-neutral and nondiscriminatory basis.

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[10] *See supra* footnote 7 (noting that applicants have submitted grant requests totaling approximately $183 million to invest in Tennessee on broadband deployment).
[11] *See* T-Mobile's Response to Question 1.

9. **Should the TRA establish a state-wide local residential benchmark rate for universal service and determine necessary universal funding based upon the benchmark, i.e., a company could draw money out of a universal fund if its rates are below the benchmark?**

The TRA should establish an appropriate statewide benchmark rate. By adopting a statewide benchmark, the Commission can set an affordable rate for local services. Further, recipient providers should be required to raise basic local exchange rates up to the established statewide benchmark rate because competitors should not be required to pay a higher surcharge when a recipient provider refuses to charge the benchmark for competitive reasons. If the State does not impose this requirement, the RLECs could choose not to increase rates, and effectively prevent the development of competition in their markets through subsidies funded by potential competitors. Subsidizing the RLECs' local rates keeps those rates artificially low, which makes it difficult for competitors to enter the market and compete when competitors' rates are not subsidized. This policy is anticompetitive and harmful to consumers in that RLEC territory because they are unable to experience the benefits of competition. Furthermore, forcing other companies to pay for below-benchmark rates by RLECs increases the other companies' costs, thereby forcing those companies to pass the costs onto their customers and to delay investment in their network. Therefore, it is essential that any withdrawal of funds from a TRAF require state-wide benchmarks. In establishing a statewide benchmark, the TRA should examine the changes in the costs to provide basic local exchange service in today's market, consider nationwide average prices for comparable service, and examine the effects of price changes on consumer subscription rates.

10. Please provide your thoughts/suggestions on whether there should be a phase out or reduction in the amount of TRAF funding once carriers elect Market Regulation.

RLECs should not receive any TRAF funding when they elect Market Regulation because this assumes that the carrier is operating in a competitive market. Carriers operating in a competitive market should receive their revenue from end-user customers, not from competitors. In a competitive market, continued disbursements to RLECs are harmful to consumers and competition. Where the RLECs are able to obtain subsidies toward their operating costs competition is discouraged and competitors disadvantaged because the competitors must operate without those subsidies, and in some cases the competitors themselves are partially funding the subsidies through a TRAF. The State should not give the RLECs the best of both regulatory worlds: to have all the guarantees of a traditional regulatory model including subsidies paid by competitors with all the freedoms of Market Regulation.

11. What factors and procedures should be considered in determining the per line support amount for rural carriers?

If the State proceeds forward in creating a TRAF, it is essential that the TRA have the authority to assess the needs of each individual RLEC based on their financial data.

12. Which companies should contribute to the TRAF, and state why or why not?

The State should exempt wireless carriers and its customers from contributing to a TRAF, as not exempting them would require wireless customers to subsidize inappropriately the operations of a few rural local exchange companies, would not promote competition and could stifle the growth of the wireless industry in the State. If the State proceeds forward in creating a TRAF, it is essential that the TRA assess a need based on requesting carriers' current financials and to only require those that take out of the fund to pay into it.

13. What method should be used to determine the TRAF contribution per company?

At the federal level, T-Mobile has advocated for a numbers-based mechanism. The existing federal revenue-based contribution methodology is unsustainable in light of ever-increasing shift away from switched telephony to Internet Protocol-based communications over broadband platforms. As more and more U.S. communications traffic travels over broadband networks, it will be increasingly difficult to collect federal universal service funds based on interstate end-user telecommunications revenues.[12] In the event a TRAF is created, the method used to contribute should mirror the federal methodology with the goal of ultimately using a numbers-based mechanism. However, any jurisdictional determinations related to wireless contribution to a TRAF must also adhere to the requirements of the Mobile Telecommunications Sourcing Act.[13]

14. If intrastate access rates are reduced in Tennessee, should language be incorporated into the proposed legislation to ensure that companies subscribing to intrastate access do not receive windfall profits, but rather return the access savings to their customers?

Those subscribing to intrastate access, whether directly or indirectly, will not receive windfall profits if the state chooses to reduce intrastate access rates because competitive pressures will require that such benefits be passed onto customers. These customer benefits could come in various forms, such as lower rate plans, further investment in the network (e.g., more cell sites, upgrade of sites from 2G to 3G sites).

[12] Any reforms in the federal contribution mechanism, however, should properly accommodate prepaid wireless services and wireless family plans.
[13] *See* Public Law 106-252, codified at 4 U.S.C Sections 116 through 126.

When competing companies are not burdened by ILEC access subsidies, they will provide better pricing to consumers and will have greater resources to create innovative new product offerings consumers desire. Furthermore, reduced access rates will enhance the overall competitiveness of the communications markets and foster a diversity of services and products, productivity and innovation, and reduced prices.

CONCLUSION

For the reasons stated in the responses to the questions noted above, the State of Tennessee should not create a TRAF; it is unnecessary in light of the affordability of basic service in Tennessee through multiple technologies and would discourage competition in the market. If the State chooses to proceed with the creation of a fund, its size must be small and include important restrictions which include: (i) ensuring that funding recipients demonstrate the amount of subsidy actually needed; (ii) impose efficiency requirements on carriers drawing from a fund; and (iii) exempting wireless carriers from contributing to the fund.

Dated: September 25, 2009

Sincerely,

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T-Mobile Central, LLC
Powertel/Memphis Inc.