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"Broadband Access and Deployment in Rural America"

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Thank you – I appreciate the opportunity to speak with you today. My name is David Sieradzki and I am a partner in the law firm of Hogan & Hartson, L.L.P. in Washington, D.C. I am here on behalf of U.S. Cellular Corporation, a Chicago-based wireless telecommunications provider that is very interested in participating in the new rural broadband loan program.

When Congress established the new broadband loan program as part of the Farm Security and Rural Investment Act of 2002, it gave RUS a momentous opportunity to advance high-speed telecommunications deployment across rural America. RUS bears the responsibility to design this important program consistent with Congress's intent – to allow maximum participation by all types of carriers and to deploy broadband services rapidly. This will provide Americans living in rural areas with access to advanced and innovative broadband services at affordable prices.

I will use my limited time today to discuss three points. First, I'll introduce U.S. Cellular, and describe its plans and aspirations for deploying high-speed services using wireless technology. Second, I'll address the importance of defining the term "broadband" in a way that will enable wireless carriers like U.S. Cellular to participate, which in turn should maximize competitive opportunities for consumers. Third, I'll talk about the benefits of broadband competition in rural America, and explain why we believe RUS should not restrict this new program to a single beneficiary (or borrower) per geographic area, as it has with other programs in the past.

1. U.S. CELLULAR'S BROADBAND DEPLOYMENT PLANS

U.S. Cellular's service area includes numerous rural areas, as well as mid-sized cities and a few major metropolitan markets, in 25 states. U.S. Cellular provides wireless telecommunications service to more than 3.5 million customers in 145 markets throughout this service territory, making it the nation's eighth largest wireless telecommunications provider. In addition, U.S. Cellular is a competitive provider of basic universal service. We have been designated as an "eligible telecommunications carrier" in two states – Washington and Iowa – and are in the process of obtaining additional designations.

U.S. Cellular has the potential to provide advanced services throughout its service area, and hopes to invest the resources to deploy the necessary facilities over the next two to three years to be able to do so. In order to enhance our offerings and better serve the expanding needs of our customers, U.S. Cellular is presently undergoing a significant system upgrade. We are in the process of deploying a cellular technology known as 1XRTT on a region-by-region basis. Our business plan calls for completion of this conversion, in all of our service regions, by the end of 2004.

1XRTT is a so-called 2½ Generation, or "2.5G," CDMA wireless technology that will significantly improve the voice and data capacity of our present system. 1XRTT technology transmits at a bit speed of up to 153 kilobits per second. This will enable customers throughout our service territory to plug a wireless modem into their personal computers, laptops, or Personal Digital Assistants and

access the Internet at speeds three to four times faster than ordinary dial-up service. This high-speed technology will also enable U.S. Cellular, working with QualComm, to offer customers an online application known as BREW™ – Binary Runtime Environment for Wireless – which runs over specially-equipped cellphones. BREW™ will enable customers to use their cellphones to access certain Internet applications, and exchange e-mails, photographs, multi-media messaging, and image and file sharing.

This mobile high-speed connectivity will be particularly beneficial to customers in rural areas, who need seamless coverage over vast areas. In particular, consumers and businesses operating in rural areas, including farms, frequently travel substantial distances during the course of a day, and have a need for mobility that, if anything, may be even greater than that in more densely populated areas. Rural customers will appreciate the ability to access the information available on the Internet and to utilize the innovative BREW™ capabilities over a mobile wireless system, at a transmission speed of up to 153 kilobits per second.

U.S. Cellular's deployment of 1XRTT technology will provide substantial benefits to customers. Not only will the new system provide high-speed connectivity for data applications, it will also substantially improve the quality of our conventional voice-grade service, particular in many of U.S. Cellular's rural markets where we currently still have analog (or "AMPS") facilities in place.

However, deploying 1XRTT technology will be quite costly. We estimate it will cost roughly $200,000 to $250,000 per cell site – multiplied by the approximately 3,000 cell sites across our 25-state coverage area, the total cost could be in the range of $600 to $750 million. In addition, we may well need to deploy additional cell sites to make sure all customers have optimal cellular system coverage – this will be expensive, particularly in rural areas. Also, we will incur costs related to providing customers connectivity via special BREW™-compatible handsets, which will be partially subsidized by the company, consistent with general practice in the wireless industry.

There is no question that this investment will be worthwhile for U.S. Cellular and worthwhile for our customers. But market realities, and the difficult capital market environment, mean that we will be required to prioritize our investment. Participation in the new rural broadband loan program could enable U.S. Cellular to move its rural markets toward the head of the queue, ensuring that rural customers will obtain rapid access to this technology.

2. THE RUS CAN PROMOTE RAPID DEPLOYMENT OF CURRENTLY AVAILABLE TECHNOLOGY BY ADOPTING A REASONABLE DEFINITION OF "BROADBAND TRANSMISSION SERVICE"

The Farm Security and Rural Investment Act of 2002 contains some critical policy guidelines for RUS in implementing the law. First and foremost, in determining whether or not to make loans or loan guarantees, the law requires the agency to "use criteria that are technologically neutral." § 601(f). What does technologically neutral mean? It means that the RUS's policies and guidelines that

determine how the loans and guarantees are distributed should confer neither artificial advantages nor artificial disadvantages on any particular technology or class of service providers. What is important is the service that consumers receive, not the specific choice of technology used by the providers.

Second, the law provides a broad and flexible definition of "broadband service" – "any technology . . . having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, data, graphics, and video." § 601(b)(1). The law defers to the agency to determine the specific data speed and other parameters. In fact, the law specifically recognizes that the appropriate data throughput rate today may be different from the appropriate rate tomorrow – it specifically directs RUS to review and modify the data speed criterion as advances in technology warrant. § 601(e).

Third, it's clear that Congress wanted the program to be up and running extraordinarily quickly. The Act establishes a 180-day time frame for RUS to adopt implementing regulations, and creates an exception from certain Administrative Procedure Act requirements to expedite the process. Congress' interest in speed shows that it cares less about the potential deployment of technologies that might be imagined in the future, and more about the rapid deployment of actual technologies that are available now.

Reading together the technological neutrality requirement, the flexible definition of "broadband" that is expected to change over time, and the expectation of speediness, we think it would be entirely consistent for RUS to adopt a definition

of broadband that would maximize the number of currently existing technologies that can qualify, and that can deployed rapidly to get service out to rural customers expeditiously. Cable modem technology, telco DSL technology, and wireless 1XRTT technology all should be embraced within the RUS definition of broadband for purposes of the program.

But this means a departure from the agency's past practice. The RUS should be prepared to learn from the successes and the mistakes of its pre-existing Broadband Pilot Loan Program. That program's eligibility guidelines defined broadband transmission service as "providing an information rate equivalent to at least 200 kilobits per second in the consumer's connection to the network, both from the provider to the consumer (downstream) and from the consumer to the provider (upstream)."

We strongly urge the RUS not to incorporate the same definition into the new Broadband Loan Program. The RUS may not realize that this two-way, 200 kilobits per second definition would automatically prohibit all wireless telecommunications carriers, including U.S. Cellular, from participating in the loan program, because the maximum bit rate of 1XRTT technology is 153 kilobits per second. Thus, a 200 kilobits per second definition would contradict Congress's mandate that the new Broadband Loan Program be designed in a technologically neutral manner. Moreover, a very ambitious data rate target that is not achievable in the short run – such as a 200 kilobits per second definition – would not meet

Congress's intent that the new Broadband Loan Program be implemented as broadly – and quickly – as possible.

Finally, a 200 kilobits per second definition is not necessary to ensure that consumers in rural areas obtain the benefits of high-speed Internet access and other broadband applications. A technology like 1XRTT provides service at a rate that is three to four times as fast as the dial-up service available today, and would mean a major improvement to the services available. The RUS must not let the perfect become the enemy of the good.

Ultimately, U.S. Cellular and other wireless carriers hope to upgrade to Third Generation ("3G") technologies, which would allow for transmission speeds of at least 200 kilobits per second, and potentially much higher. However, 3G is out of reach at present, due primarily to severe spectrum constraints. In fact, the Congress, FCC, NTIA, and other government agencies have yet to reach consensus what spectrum should be made available for wireless carriers to deploy 3G technology. Thus, the time frame for 3G wireless offerings is very uncertain. Surely Congress did not intend to doubly penalize wireless carriers by denying the industry both the ability to obtain 3G spectrum and the ability to participate in the new Broadband Loan Program.

In sum, adopting a 200 kilobits per second definition, as was used in the pilot program, would unfairly deny rural consumers the ability to access otherwise important and valuable meaningful advanced wireless services simply because wireless carriers presently cannot meet this technical and somewhat

arbitrary standard. By defining broadband transmission services using a somewhat slower transmission speed – 125 or 150 kilobits per second rather than 200 – the RUS will allow participation by a broader pool of carriers and fulfill Congress's vision for the new program.

3. COMPETITIVE BROADBAND ALTERNATIVES WILL BENEFIT RURAL CONSUMERS

The Telecommunications Act of 1996 was intended to benefit "all Americans by opening all telecommunications markets to competition." Newly emerging broadband services certainly should not be left out of this competitive framework – and neither should rural parts of the country. Americans in rural areas are entitled to the benefits of competition no less than those in urban areas. In particular, consumers in rural areas of the country will realize tremendous benefits from the introduction of facilities-based broadband services by carriers like U.S. Cellular. Experience in other telecommunications market sectors, such as long-distance and wireless, and throughout the U.S. economy, demonstrates that competition benefits consumers with:

- Introduction of new and innovative services;
- Access to a greater range of service choices;
- More rapid deployment of technological innovations from competitive entrants;
- Incentives for the incumbent carriers to upgrade their facilities and improve their customer service; and
- More reasonable rates.

As the RUS implements the new Broadband Loan Program, it has a unique opportunity to help rural consumers enjoy the benefits of competition. Of course, this means a departure from the RUS's past practice. In the past, the rural ILECs were the only providers of high-quality telephone service in rural areas – and as the steward of a limited pool of loan funds, it made sense to make those funds available only to one borrower per geographic area. Also, the governing statute included such a restriction.

However, RUS is now operating in a completely different environment. First and foremost, the 2002 statute authorizing the Broadband Loan Program contains no "one per market" restriction.

Second, in a program that is required, by statute, to be "technologically neutral," RUS must take into account that, unlike most ILECs, the various providers of facilities-based broadband services over different technological platforms have overlapping geographic service territories. Differences in the way various industries evolved over time, as well as starkly different regulatory licensing rules, have led to a patchwork of different geographic definitions for the service territories of cable operators, telephone companies, and different types of wireless carriers. (There are important differences among wireless carriers themselves. For example, cellular carriers are licensed on the basis of Census Bureau MSAs and RSAs, while PCS carriers generally serve larger geographic areas defined by Rand McNally MTAs and BTAs.)

This means that a "no overlap" policy would be very hard to implement, as a practical matter, consistent with technological neutrality. For example, if U.S. Cellular successfully applies for loan funds in a rural market that it serves, that market may overlap with half a dozen rural ILEC service territories. Should all those ILECs be precluded from receiving loans to serve their customers? The "one per market" rule simply doesn't make sense in the context of a technologically neutral program.

Third, and most significantly, this country is no longer operating in an environment of legally-sanctioned monopoly telephone companies. RUS should get out of the business of picking winners and losers, by directing loan subsidies to one category of providers and denying those subsidies to another category of providers. Instead, RUS – in tandem with the established policies of the FCC and state regulators – should establish a level playing field for competition. Then it should get out of the way, and let the best company win. Free enterprise and competition are what America stands for. The RUS needs to align its policies accordingly.

Thus, U.S. Cellular respectfully submits that RUS should depart from the structure of its pre-existing loan programs, including the Broadband Pilot Loan Program. As it implements the new loan program, the RUS should <u>not</u> include a provision restricting loans for "duplication of existing adequate broadband transmission services provided by others," or otherwise precluding loans "to finance the duplication of existing adequate broadband transmission services provided by others." Such a policy is neither articulated in nor mandated by the statute, and is

contrary to the thrust of Congressional telecommunications policy making at least since 1996.

(The only explicit restriction in the statute is on the eligibility of states and local governments, which may receive a loan or a loan guarantee "only if no other eligible entity is already offering, or has committed to offer" broadband services. The fact that Congress applied no such restriction to private companies is a strong indication that it did not intend RUS to impose such a restriction either. Also, to the extent that RUS is concerned about spreading a limited pool of loans and guarantees across the broadest range of consumers, it should consider other means that could advance that worthy goal that would be less restrictive than a "one-to-a-market" rule.)

CONCLUSION

In sum, I have described U.S. Cellular's plans to deploy 1XRTT technology across its largely rural territory, which provides transmission speeds of up to 153 kilobits per second. I have also shared two strong recommendations for how the RUS should implement this program: (1) Adopt a definition of "broadband" such as 125 or 150 kilobits per second, which would be is consistent with technological neutrality and rapid deployment of existing technologies; and (2) Do not restrict loan availability to one provider per geographic area. Instead, RUS must recognize that competition in the provision of broadband services to rural Americans could be the key to promoting widespread, expeditious deployment, and

ensuring the availability of service from a variety of telecommunications carriers at affordable rates. Rural Americans deserve no less.

Thank you very much.

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