BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Re: Order Instituting Rulemaking into the Review of the California High Cost Fund B Program	Rulemaking 06-06-028 (Filed June 29, 2006)

COMMENTS OF OMNIPOINT COMMUNICATIONS, INC., dba T-MOBILE (U-3056-C) ON THE INTERIM OPINION IMPLEMENTING CALIFORNIA ADVANCED SERVICES FUND

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Date: December 10, 2007

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Pursuant to the Commission Rule of Practice and Procedure 14, Omnipoint Communications, Inc., dba T-Mobile ("T-Mobile"), respectfully submits the following comments on the Interim Opinion Implementing the California Advanced Services Fund (the "Interim Opinion").

I. INTRODUCTION

On its face, the Interim Opinion promotes a laudable goal; i.e., encouraging "the deployment of broadband facilities for use in provisioning advanced telecommunication (as well as voice) service in unserved and underserved areas of California."[1] Neither T-Mobile, nor any other party to date, disputes that the availability of broadband services – like other advanced technologies – has a role to play in the telecommunications markets of the 21st century. In fact, the Governor's and the Legislature's recent attention to the promotion of these types of services on a technologically neutral basis is a welcome development for all consumers and carriers. The key question in this proceeding, however, is not whether broadband has a role to play, but

whether it is appropriate for the Commission to now provide consumer-funded subsidies to certain carriers to build-out their broadband networks.

As discussed more thoroughly below, the answer to that question is "no" - at least not at this time. Indeed, the proposed creation of the California Advanced Service Fund ("CASF") as contemplated in the Interim Opinion is particularly problematic. Among other things:

- It confuses the concept of broadband availability with broadband penetration rates;
- It ignores the fact that broadband is already being provided through a broad array of service providers in the State;
- It fails to establish any valid correlation between the deployment of broadband services and the Commission's universal service goals;
- It undermines the goals of the CHCF-B Fund and is inconsistent with the Commission's URF I decision;
- It creates a potentially discriminatory subsidy source; and, perhaps most importantly,
- It constitutes an unauthorized use of consumer monies.

Despite the apparent problems with the CASF, the Commission may want to further explore broadband issues or perhaps more specifically, potential barriers to broadband penetration. To that end, the Commission may want to work in concert with the State Legislature[2] and other interested parties to better understand the challenges of the broadband market. In the meantime, however, the Commission should refrain from creating yet another carrier subsidy which, even if well-intentioned, is entirely inappropriate.

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[1] Interim Opinion at p. 2.

[2] To date, the Legislature has not yet determined that it is in the best interest of California to create a public subsidy to support the deployment of broadband access in the state and/or that it wants the Commission to administer such a subsidy. Accordingly, at the very minimum, T-Mobile respectfully suggests that the creation and/or implementation of the CASF is premature.

II. COMMENTS

A. Broadband Penetration Rates are Not Necessarily Indicative of Broadband Availability.

The Interim Opinion suggests that the Commission needs to act now since "[w]e cannot wait for a national solution to alter the downward trend of the United States' ranking for broadband *availability*."[3] It further justifies the creation of the CASF "[g]iven the slow historic development of broadband services in California…"[4] Both of these statements, however, seem to be inconsistent with what is currently known about broadband in this state.

As an initial matter, even the information compiled to date by the Commission indicates that broadband is *widely available* throughout the State.[5] For example, the most recent report on broadband released by the Telecommunications Division indicates that broadband services are available through a variety of technologies including wireless, cable, broadband over powerline, DSL, and satellite.[6] In addition, most Californians apparently have the option of more than one

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[3] Interim Opinion at p. 3 (citing Organization for Economic Co-operation and Development ("OECD") Broadband Statistics to December 2006 (rel. April 2007)).

[4] Id. at p. 17 (citing Connecting California, California Public Utilities Commission, Broadband Report Update (September 2006) (the "Broadband Report Update")

The Interim Opinion also seems to justify the creation of the CASF on the basis that it is necessary in order to bring advanced telecommunications to high cost rural areas of California. See Id. at p. 6 ("…public sector has a role to play as well, particularly where in some high cost places in California, the market has failed to bring advanced communications to it.") See also, id. at pp. 17-18 (allocation of money to CASF is critical to obtaining advanced telecommunications services including voice in rural areas). The factual basis for those statements, however, is at best unclear. In any event, there is no basis for using public monies for such a purpose. In addition, the CASF itself is not limited to high cost areas. Id. at p. 49, Finding of Fact 29.

[5] See generally, Broadband Report Update, supra. This report can be found at http://www.cpuc.ca.gov/static/telco/reports/0505_broadbandreport.htm.

[6] See Broadband Report Update at p. 2; see also California Public Utilities Commission, Broadband Deployment in California (May 5, 2005) (the "Broadband Deployment Report") at Chapter 3 (Broadband Market Competitors). This report can be found at http://www.cpuc.ca.gov/static/telco/reports/0505_broadbandreport.htm.

broadband provider regardless of where they may live.[7] Moreover, carriers, municipalities and community groups continue to look for new ways to bring broadband to their respective constituents while new technologies are regularly being introduced to the market.[8]

In addition, there is no factual basis to support the assertion that broadband services have developed slowly in the State. Indeed, the Broadband Report Update (relied upon by the Interim Opinion) seems to indicate just the opposite. For example, that report refers to an average annualized 40% growth in broadband connections from 2000-2005 and a 36% growth rate in connections from the end of 2004 to the end of 2005 alone.[9] The Commission report further confirms that California's broadband penetration rate has been consistently above the national average and that in 2005 (i.e., the last year for the reported data), broadband connections grew faster than the national rate even as the State's population declined.[10] The report also touts the multiple platforms used to deliver broadband, as well as emerging technologies (e.g., broadband through gas lines) and innovative municipal/community-based efforts to deliver broadband to their residents.[11]

Moreover, to the extent the Interim Opinion confuses the supposed lack of "availability" with low "penetration rates", that premise also warrants further consideration. It is true, as noted by the Interim Opinion, that a recently published report indicates that the United States is ranked

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[7] See Broadband Report Update at p. 8 at p. 24 (number of broadband providers by zip codes).

[8] See Broadband Report Update at pp. 6-17 (discussion of municipal and community-based broadband efforts); see also, id. at p. 8 (discussion of EV-DO Wireless Broadband and Broadband over gas lines).

Indeed, broadband over satellite means that essentially every Californian has the option of obtaining some form of broadband service albeit at prices and connection speeds that apparently are not particularly attractive given the other options available.

[9] Id. at p. 3.

[10] Id. at p. 4.

[11] Id. at pp. 6-17.

15th in the world with respect to the number of broadband subscribers per 100 inhabitants.[12] Penetration rates, however, do not equate with service availability which, at least based on the currently available data discussed herein, does not seem to be a particularly pressing issue in California.

In fact, by inadvertently confusing availability with penetration, the Interim Opinion fails to note the marked increase in the apparent consumer desire to use (and pay for) broadband services. The report confirms that that national penetration rates – like state penetration rates - have increased dramatically (e.g., 3 to 4 fold) over the past few years. [13] Indeed, the most recent OECD statistics indicate an increased penetration rate from 19.6 to 22.1 subscribers per 100 inhabitants in that last six months alone.[14] While those penetration rates will almost certainly increase with time as consumers determine that broadband is a more essential service, and as the service becomes more affordable, the available information does not seem to indicate that there is an issue with broadband availability. Perhaps more importantly, there is no basis in the record to suggest that publicly funded subsidies to carriers for deployment would in any way encourage more people to use broadband services.

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[12] Organization for Economic Co-operation and Development ("OECD") Broadband Statistics to December 2006 (rel. April 2007). This report can be found at http://www.oecd.org/document/7/0,3343,en_2825_495656_38446855_1_1_1_1,00.html.

T-Mobile is not in a position to comment on the validity of this report other than to note that is has apparently been questioned on the basis that, among other things, it fails to account for broadband use at work and by students in colleges. (See San Francisco Chronicle Article, *U.S. Drops to 15th in Web Service* (October 31, 2007). See also http://www.websiteoptimization.com/bw/0705/ (OECD Broadband Report Questioned).

[13] Id. (penetration rates increased from 4.5 to 19.6 subscribers per 100 residents from 2001 to December 2006); see Broadband Report Update at p.5, Chart III (California penetration rates increased from 4.88 to 16.98 subscribers per 100 persons from December 2001 to December 2005).

[14] See OECD Broadband Statistics as of June 2007 (rel. November 2007). This report can be found at http://www.oecd.org/document/60/0,3343,en_2825_495656_39574076_1_1_1_1,00.html. The report also notes that the United States has more broadband subscribers than any other OECD nation, i.e., 66.2 million subscribers.

Finally, there is little debate that further data is necessary to inform any potential changes to current public policy. As acknowledged both in the Interim Opinion and in D.07-09-020, "California is [just] beginning to develop the mechanisms for identifying and gathering certain useful broadband data as the technology and industry continue to evolve."[15] Moreover, the report from the Governor's Task Force on broadband availability has not been released and the broadband subscribership data required by DIVCA is not yet available.[16] Although that information will certainly prove useful in the ongoing discussions of broadband issues in the state, the data available to date simply does not seem to support the type of regulatory intervention contemplated by the CASF.[17]

B. <u>There is no Meaningful Correlation between Broadband Deployment and the Commission's Universal Service Goals</u>

The proposed creation of the CASF seems to rest on the premise that "CASF will 'promote the goals of universal service telephone and …reduce any disparity in the rates charged by those companies.'"[18] Although T-Mobile does not doubt that CASF will likely promote the ability of certain carriers to underwrite the deployment of their broadband networks, it is difficult, if not impossible, to understand how it addresses the Commission's universal service goals.

According to the Commission, "universal service" has two components: (1) it includes a predetermined "minimum level of telecommunications service that must be made available to virtually everyone in the state" [currently defined as "basic service"] and (2) the rate for that

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[15] See Interim Opinion at p. 16 and D. 07-09-020 at p. 59.

[16] Pub. Util. Code § 5960.

[17] See also Broadband Deployment Report, supra, at Chapter 6 (identifying barriers to broadband deployment such as access and rights of way issues) and Chapter 9 (recommendations such as reform of rights of way).

[18] Interim Opinion at p. 19 (citing Pub. Util. Code § 739.3(c)); see also id. at p. 10 ("CASF also will promote universal service goals…")

service must be affordable.[19] Although it is true that the Commission could expand the definition of "basic service" to include broadband, it has previously declined to do so.[20] The Interim Opinion also does not purport to expand the definition. Thus, the provision of broadband in and of itself is by definition not a component of universal service.

The fact that voice communications can "ride on broadband infrastructure" does not equate to promoting universal service any more than the fact that voice communications can ride on wireless or traditional wireline networks. Moreover, as the recently released Commission report on universal service confirms, "…California is continuing to meet its stated universal service goals for residential telephone service…"[21] Thus, even if the delivery of voice over broadband was a legitimate goal, the Interim Opinion fails to note that the Commission's universal service goals are being satisfied with today's networks.[22]

The report also confirms what common sense would suggest; i.e., that among the demographic groups where penetration rates are lowest, the income of the potential subscriber,

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[19] See D.96-10-066 at p. 16; see also id. at p. 54 ("Universal service policies have always had two focuses. The first is to improve the number of households who have telephone in areas that are currently served by a telephone service provider. The second is to ensure that telephone service is available over wide geographic areas.")

The Interim Opinions reference to the federal definition of universal service does not really explain how broadband subsidies are appropriate in the context of this state proceeding. See Interim Opinion at p. 11 (citing 47 U.S.C. § 254(c)(1)).

[20] See D.96-10-066 at pp. 39-49; D. 02-10-060 at p. 2 (noting that in its Broadband Deployment Report, "the Commission found that current conditions do not support including broadband services in basic telephone service."); see also California Public Utilities Commission, Broadband Deployment in California (May 5, 2005) (the "Broadband Deployment Report"). This report can be found at http://www.cpuc.ca.gov/static/telco/reports/0505_broadbandreport.htm.

[21] See Report to the California Legislature, Universal Telephone Service to Residential Customers, at p. 5 (August 2007). This Report can be found at http://docs.cpuc.ca.gov/published/REPORT/72294.htm.

[22] T-Mobile notes that the current state penetration rates are likely understated since it is unclear whether they fully account for voice communications currently being provided by wireless and VoIP. Id. at p. 8.

"is the most significant factor in a household's decision to subscribe to telephone service."[23] Although programs like Lifeline have been successful in improving basic service penetration rates for low-income Californians, there is nothing to suggest that the further deployment of broadband would promote either increased penetration among those communities or more reasonable rates for basic voice services.

The Interim Opinion's attempt to justify the creation of the CASF on the basis it "will reduce the disparity in rates [for basic service] charged by those companies" is particularly curious. As the Commission is aware, it currently regulates the rates for basic service provided by the major ILECs in the state. Under the new URF framework, however, those ILECs (like the carriers with whom they compete) will soon have full pricing flexibility for those services as they have for all other non-basic services. Thus, to the extent that carriers ultimately choose to deploy broadband to provide those services, it is unclear how subsidizing that deployment will have any affect on the disparity in rates (which would be expected to a certain extent in a competitive market) for voice communications.

Simply put, subsidies for broadband deployment cannot and should not be justified on the basis that they promote universal service because "telephone service is simply one of the many data streams flowing over the broadband connection."[24]

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[23] Id. at p. 30.

[24] Interim Opinion at p. 5. It is difficult to understand why the nexus between providing broadband access and voice communications is any more critical than providing voice communications using any other technology. Although T-Mobile fully supports the goals of universal service, there is no reason to believe that the provision of basic voice communications over broadband should be treated differently than the provision of basic voice communications over any technologically capable platform. Such a policy would, in fact, be counterintuitive to the Commission's goals of developing technologically neutral programs.

C. CASF will Undermine the High Cost Fund and is Otherwise Inconsistent with URF I.

Although the Commission is addressing many of the details of the recently modified CHCF-B Fund[25] it seems clear that high cost subsidies (to the extent they are maintained) should be provided on a competitively neutral basis to the carrier that is able to provide basic voice communications in high cost areas for the smallest subsidy. The CASF, however, would completely undermine the underlying goals of the high cost fund.

In particular, the CASF would essentially subsidize a carrier's costs for providing service - as long as it was tied to broadband - *regardless of whether that carrier was the low-cost provider in the particular geographic area*. Thus, for example, a carrier that could no longer rely on the same level of support (if any) from CHCF-B would now be able to replace that subsidy with CASF so that it could upgrade its legacy network with broadband architecture. At worst, a carrier could build out its network with subsidized CASF funds and then obtain further CHCF-B subsidies as the low-cost (albeit because of the CASF subsidy) provider in that area. In either case, CASF would distort the consumer's ability to evaluate the true costs of her choice in what is supposed to be a competitive market.[26]

Moreover, CASF is inconsistent with D.06-08-030 ("URF I"). In that decision, the Commission focused on competition in the "voice communications market" to justify its

[25] See e.g., Reply Comments of Omnipoint Communications, Inc. dba T-Mobile on the Assigned Commissioner's Ruling Regarding the Scoping and Scheduling of Phase II Issues (November 28, 2007).

[26] T-Mobile notes that the Interim Opinion's proposal to allow carriers to identify which areas are "unserved or underserved", subject to challenge by other carriers (see Interim Opinion at p. 40) only highlights the depth of the potential problems created by the CASF. As a matter of public policy, it is inappropriate to put the burden of policing subsidy applications on other carriers especially when it is unclear whether other carriers are even providing competitive services in that area. Such a system can only favor larger entities that have the resources necessary to monitor the entire state. Moreover, this proposal makes it clear that there is a decided lack of information on the state of broadband availability throughout the state such that the CASF cannot even determine where subsidies would be appropriate in the first place.

deregulatory approach to the ILECs.[27] The Interim Opinion also references competition for voice communications by noting that consumers have been turning more to competitive carriers, and wireless in particular, for their voice communications.[28] That competition, however, does not justify creating a new subsidy for voice communications delivered over broadband any more than it justifies a new subsidy for voice communications delivered over any other technology. In other words, a carrier that decides to provide voice communications using broadband should compete on equal footing with other voice communication providers; there is no reason to subsidize one over the other. To the contrary, the creation of CASF would undercut the very competitive principles set forth in URF I by tilting the scales in favor of carriers that can provide voice over broadband.

D. CASF Subsidies for Voice Communications Delivered over Broadband are Discriminatory

As this Commission (and the FCC) has long recognized, universal service programs must be technologically neutral and encourage the provision of basic voice communications without regard to the technology used by the carrier.[29] The Interim Opinion, and the recent CHCF-B decision, reiterate that principle:

> Accordingly, it would be imprudent to continue to only support legacy copper networks of incumbent local exchange carriers through the universal service programs due to the fact that basic voice telephone service is being provided on an increasing basis using advanced

[27] See e.g., URF I at p. 121 (highlighting the showing made by Verizon California which "shows the ubiquitous competitive presence of wireless carriers, CLEC wireline carriers and cable service providers present within its service territory.".

[28] Interim Opinion at pp.4-5 (citing the increase in wireless subscribership/usage and the decrease in ILEC line losses).

[29] See e.g., Decision 96-10-066, Appendix B, Rule 3.A.4 and 5 (the Commission has declared policies "… to provide consumers with the ability to choose among competing basic service carriers regardless of the technologies employed by the carriers who provide basic service…" and "…to promote deployment of advanced telecommunications technology to all customer segments…"). The fact that CHCF-B has historically been administered in a discriminatory manner is a topic that is being discussed in Phase II of this proceeding. See e.g., T-Mobile November 28, 2007 Reply Comments at p. 5.

> technologies such as VOIP and wireless technologies including broadband systems. Limiting universal service support to particular technologies skews competitive forces, and in some cases, may even prevent consumers in high cost areas from ever receiving advanced communication services and the economic and social benefits that flow from such services.[30]

T-Mobile completely supports that principle, i.e., exclusive landline subsidies are inappropriate in a competitive market. The use of public monies to support the provision of basic voice communications delivered over broadband would, however, be the functional equivalent of providing subsidies only to legacy copper networks (or any other particular technology potentially used to provide voice communications). Neither should be condoned nor promoted by the Commission.[31]

Moreover, the CASF seems to implicitly create a discriminatory fund. First, the Interim Opinion provides that funding "shall be limited to entities with a certificate of public convenience and necessity (CPCN) that qualify as telephone corporations."[32] Thus, on its face, the fund would seem to exclude many potential broadband providers since, at a minimum, wireless carriers (as well as various other providers of voice communications) do not have CPCNs.

In addition, the Interim Opinion also seems to require CASF applicants to provide "basic service" as set forth in D. 96-10-066.[33] Although there is a recognition that the definition of basic service needs to be modified to include to include voice grade communications service offered by wireless and VoIP,[34] the Interim Opinion does not address the other requirements of basic service which seem to categorically preclude non-wireline providers. In fact, those very

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[30] See Interim Opinion at pp. 5-6; see also D.07-09-020 at p. 60.

[31] *See, e.g., In re Western Wireless Corporation Petition for Preemption*, FCC 00-309, File No. CWO-98-90 (rel. August 28, 2000) (universal fund which is available only to ILECs would likely violate competitive neutrality provisions of the Telecommunications Act of 1996).

requirements are the subject of discussions on Phase II of the CHCF-B proceeding and also the current review of Lifeline in R.06-05-028.

Moreover, the Interim Opinion adopts a 3 MBPS/1MBPS benchmark which, at least based on current technology, seems to exclude wireless carriers. In fact, it is not clear which if any carriers currently can offer those connection speeds commercially. All of the parties have raised substantive questions about the adoption of these benchmarks although the Interim Opinion seems to suggest that at least one of the ILECs is capable of providing broadband at these speeds. At a minimum, the basis for selecting such benchmarks seems arbitrary.[35]

Finally, CASF would essentially institutionalize bundled broadband/voice services. Such a result would be devastating for any carrier that was otherwise attempting to provide voice communications (a market that the Commission only recently determined was competitive) through some other technology in the same area or otherwise trying to compete for voice communications with non-bundled services. In brief, CASF could potentially put an end to any true competition for voice communications in the affected areas.

E. CASF Constitutes an Unauthorized Use of Public Monies

The Interim Opinion is at best unclear on whether CASF constitutes a new fund or whether it is part of CHCF-B. On one hand, it asserts that it relies on the Commission's authority under Pub. Util. Code section 701[36] and Article XII of the Constitution (not Pub. Util. Code §

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[32] See Interim Opinion, Ordering Paragraph 10 at p. 53.

[33] Id. at p. 32-33.

[34] Id. at p. 51, Conclusion of Law 10.

[35] See e.g., Broadband Report Update (September 2006) at p. 5 ("There is no industry or technically agreed upon definition of the connection speeds, or transfer rates, that constitute broadband. Commonly, however, broadband transmissions are considered to be two-way connections between 384 kilobits per second (kbps) to 25 megabits per second (Mbps). For reporting purposes, the FCC considers broadband as transfer rates of 200 kbps in at least one direction.")

[36] Although Pub. Util. Code § 701 provides the Commission with broad authority to take any action

739.3 as discussed in an earlier stage of this proceeding) to establish the CASF and asserts that the "funds will be collected separately for the CASF that for the CHCF-B…"[37] It also describes CASF as a "complement to the CHCF-B" that will "promote universal goals but will not be a diversion or transfer to another fund."

Although it is difficult to parse through the precise intent of the Interim Opinion with respect to whether CASF constitutes a new fund or is considered an expansion of CHCF-B, the incontrovertible facts are that the Interim Opinion proposes to use monies collected under the auspices of CHCF-B to subsidize broadband deployment. As noted in the text of the Interim Opinion:

> The CASF allocation [$100 million] represents our estimate of the amount of funds collected by half of the 0.5% [CHCF-B] surcharge over a two year period.[38]

The use of those funds to subsidize broadband deployment, however, is unauthorized under any circumstances.

First, CHCF-B funds cannot be used to subsidize broadband deployment. As discussed in earlier comments, the CHCF-B Fund was specifically created "to establish a fair and equitable *local rate support* structure aided by universal service rate support to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as

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which is "necessary and convenient in the exercise of such power and jurisdiction", T-Mobile is still not aware of any precedent under that section alone which would support the creation of public subsidies for particular technologies (especially those which seem to fall outside the jurisdiction of the Commission) or the funding mechanism for such a subsidy. *Cf., Assembly of the State of California et al. v. Public Utilities Comm'n*, 12 Cal. 4th 87, 104 ("…section 701 does not authorize Commission to divert substantial portion of the interest component of a ratepayer refund for a purpose entirely different from payment to the ratepayers."). If it were otherwise, the Commission would now have the power to tax consumers; i.e., a power it certainly is not granted under the State Constitution.

[37] Interim Opinion at p. 10.

[38] Interim Opinion at p. 23.

determined by the Commission."[39] The fund itself, as created in D.96-10-066, defined a minimum level of "basic service" to be provided by COLRs and provided a mechanism for those carriers to recover the difference between the rates charged and the so-called "proxy costs" in designated high cost areas throughout the state. To support the Fund, mandatory surcharges were (and still are) imposed on telecommunication consumers throughout the state. The moneys in the Fund, however, "are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing *universal service*."[40]

Moreover, in D. 07-09-020, the Commission explicitly reduced the CHCF-B surcharge to 0.5% "to reflect the anticipated reduced level of B-Fund support claims resulting from the revised threshold benchmark adopted in this order."[41] The Commission did not adjust the surcharge to fund CHCF-B and CASF (or any other program), nor was it authorized to do so.

Nonetheless, the Interim Opinion now suggests that *half* of the money to be collected from that CHCF-B surcharge can now be used for CASF without otherwise affecting the funds necessary for CHCF-B. That simply cannot be accurate. Either the original surcharge reduction in D.07-09-020 was inflated by 50% or the CHCF-B Fund will fall short when CASF is implemented. In the first instance, the CHCF-B surcharge reduction should be passed on to consumers. In the second, CASF clearly constitutes an improper diversion of the CHCF-B funds.[42] The Interim Opinion's conclusory statement to the contrary[43] does not alter that reality.

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[39] Pub. Util. Code § 739.3(c).

[40] Pub. Util. Code § 270(b) (emphasis added).

[41] See D. 07-09-020 at pp. 132-133, Ordering Paragraph 5.

[42] Cf., Pub. Util. Code § 270(c) ("Moneys in each fund may not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity…"); *Cf., Assembly of the State of California et al. v. Public Utilities Comm'n*, 12 Cal. 4th 87, 104 ("…section 701 does not authorize Commission to divert substantial portion of the interest component of a ratepayer refund for a purpose entirely different from payment to the ratepayers.").

[43] Interim Opinion at p. 10 ("The CASF also will promote universal service goals, but will not be a

III. CONCLUSION

For the reasons set forth above, T-Mobile respectfully suggests that the proposed CASF is unnecessary, inappropriate, (if not unlawful) and at the very least premature pending further information on the broadband market and legislative guidance. Instead, the Commission should focus its efforts on resolving the various outstanding issues in this docket including but not limited to addressing the critical issues identified in the parties' various comments on Phase II.

Respectfully submitted this 10th day of December, 2007 at San Francisco, California.

WILSON & BLOOMFIELD LLP

By /s/

Leon M. Bloomfield

Attorneys for Omnipoint Communications, Inc., dba T-Mobile

diversion or transfer to another fund.")

CERTIFICATE OF SERVICE

I, Richard M. Marshall, certify that the following is true and correct:

I am employed in the City of Oakland, County of Alameda, California, am over the age of eighteen years, and am not a party to the within entitled cause. My business address is 1901 Harrison Street, Suite 1620, Oakland, CA 94612.

On December 10, 2007, I served a copy of:

COMMENTS OF OMNIPOINT COMMUNICATIONS, INC., dba T-MOBILE (U-3056-C) ON THE INTERIM OPINION IMPLEMENTING CALIFORNIA ADVANCED SERVICES FUND

attached hereto, on all parties to the attached service list for R.06-06-028 by sending copies via U.S. Mail and/or electronic copies via email.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on December 10, 2007 at Oakland, California.

_____/s/_____
Richard M. Marshall

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