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**To:** [BOCrfc2015](#)  
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**Subject:** Broadband Opportunity Council Comments  
**Date:** Wednesday, June 10, 2015 4:29:52 PM  
**Attachments:** [Ericsson Broadband Opportunity Council Comments Final.pdf](#)

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Attached are Ericsson's comments to the Broadband Opportunity Council in response to the Federal Register Notice of April 29, 2015.

Best, Kelley

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**DEPARTMENT OF COMMERCE**  
**National Telecommunications and Information Administration**  
**Docket No. 1540414365-5368-01**

**DEPARTMENT OF AGRICULTURE**  
**Rural Utilities Service**  
**RIN 0660-XC019**

**Broadband Opportunity Council Notice and Request for Comment**

**Comments of Ericsson**

**I. INTRODUCTION**

Ericsson is pleased to offer comments in support of efforts to help people gain access to fast and affordable broadband<sup>1</sup> to the Departments of Commerce and Agriculture and the 23 additional agencies and departments involved in the Broadband Opportunity Council (the “Council”). The goals of the Council very much align with Ericsson’s vision for a Networked Society, where every person and every industry is empowered to reach their full potential.

Ericsson is the world leader in communications technology and services. Forty percent of the world’s mobile traffic is carried over Ericsson networks and we support networks that connect more than 2.5 billion subscribers. We are also the world’s largest supplier of LTE, with more than 60% market share. Our services, software and infrastructure – especially in mobility, broadband and the cloud – are enabling the

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<sup>1</sup> See Broadband Opportunity Council Notice and Request for Comments, Notice, 80 Fed. Reg. 23,785 (rel. Apr. 29, 2015) (“Notice”).

telecom industry and other sectors to do better business, increase efficiency, improve the user experience and capture new opportunities.

## **II. THE NEED FOR FAST AND AFFORDABLE BROADBAND**

Ericsson regularly publishes a comprehensive update on mobility trends globally and in North America. According to the June 2015 Mobility Report, by the end of 2020, mobile data traffic in North America will be close to 6 Exabytes per month – or 7.5 times the traffic of 2014.<sup>2</sup> And while aggregate mobile voice traffic will increase slightly over the next six years, Ericsson’s research forecasts that mobile data traffic will increase at a Compound Annual Growth Rate of nearly 40 percent from 2014 to 2020.<sup>3</sup> In 2020, mobile networks in North America will carry more mobile data than the cumulative totals predicted for the 5-year period from 2010 to 2016.<sup>4</sup>

Over the next five years, mobile service providers will continue to transition customers to 4G networks to deliver new services like VoLTE and to enable LTE Advanced features.<sup>5</sup> By 2020, approximately 90 percent of subscriptions will be LTE and 5G will begin to be deployed.<sup>6</sup> And by 2020, North America will add subscriptions for almost 150 million devices that use broadband, including smartphones, mobile PCs, tablets and mobile routers.<sup>7</sup> However, much of this subscription growth will come from

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<sup>2</sup> Ericsson Mobility Report, June 2015, North American app. at 5, *available at* <http://www.ericsson.com/res/docs/2015/ericsson-mobility-report-june-2015-rnam-appendices.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

an increased number of connected devices per user, rather than the addition of individual new users.<sup>8</sup>

The upshot is that the have-nots are getting ever further behind, as the haves reap the advantages of connecting to everyone and everything, everywhere and in real time.

Ericsson therefore commends President Obama for initiating the current effort to help more people around the country gain access to fast and affordable broadband. We have focused our comments as the Council indicated would be most useful: on a “[s]pecific, actionable proposal[] for [a] policy mechanism[]” to RUS.<sup>9</sup>

At the outset, Ericsson asks that RUS, and other agencies, recognize that connecting the U.S. requires technology neutral solutions. Rather than focusing on a specific broadband technology, government agencies should permit solutions that utilize whatever makes the most sense in a given situation. Indeed, in some situations it may actually be impossible to deploy certain technologies due to unique environmental conditions , for example in the high arctic. The best solution could be fixed microwave, fiber or LTE. High speed broadband is no longer just the domain of fixed technologies.

Question B.6 of the *Notice* asks, “What regulatory barriers exist within the agencies of the Executive Branch to the deployment of broadband infrastructure?”<sup>10</sup> Ericsson has long encountered one particular regulatory barrier to broadband deployment that the Department of Commerce’s Rural Utilities Service (RUS) can readily remove.

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<sup>8</sup> *Id.*

<sup>9</sup> *Notice*, 80 Fed. Reg. at 23,786.

<sup>10</sup> *Id.*

RUS Form 397, the Special Equipment Contract,<sup>11</sup> contains provisions relating to liability and indemnification that are particularly onerous and would not be acceptable in a commercial arrangement. Ericsson has limited its participation in many RUS programs to date because of these provisions. This has had the net effect of denying rural telecommunications operators a potential supplier.

Based on our extensive experience in the marketplace for telecommunications equipment, Ericsson proposes that RUS revise Form 397 to reflect commercial terms that are readily accepted in today's market for telecommunications equipment sales. We have proposed the following revisions based on our own commercial agreements and include suggested language in the appendix to this filing.

### **III. CONCLUSION**

Ericsson reiterates our support for this important initiative. As the Council proceeds with its work, we ask that it keep in mind the importance of permitting the technical solution makes the most sense rather than focusing on a particular technology. We also request that RUS examine and revise the contract provisions in Form 307 that have chilled marketplace participation.

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<sup>11</sup> See RUS Form 397, available at [http://www.rd.usda.gov/files/UTP\\_form\\_397.pdf](http://www.rd.usda.gov/files/UTP_form_397.pdf).

Respectfully submitted,

**ERICSSON**

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June 10, 2015

## APPENDIX

### Article II, Section 6:

Bidder warrants that each Product provided by Bidder to Owner hereunder will, during the applicable warranty period, perform in substantial accordance with the applicable specifications. The warranty period is: (i) twelve (12) months for the hardware components of the Product, commencing upon acceptance of the Product, (ii) three (3) months for software components of the Product, or (iii) twelve (12) months for services, commencing upon the date the Service is performed. If notified by Owner of any Product's failure to perform in substantial accordance with the applicable specifications within the applicable warranty period, Bidder shall, at its election and expense, repair or replace any such defective Product. Such repair or replacement includes material, labor and services, and shall be Owner's sole and exclusive remedy and Bidder's sole and exclusive obligation in the event this warranty is breached. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THERE ARE NO, AND BIDDER HEREBY DISCLAIMS ALL, OTHER WARRANTIES, WHETHER IMPLIED, EXPRESS OR STATUTORY, WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED TO OWNER HEREUNDER, INCLUDING WITHOUT LIMITATION WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

### Article IV, Section 6:

“(a) Bidder shall, at its own expense, (i) defend Owner in any claim or legal action in the United States, alleging that the use of any Product provided by Bidder to Owner hereunder or any portion thereof, directly infringes any patent, trademark or copyright of any third party (“Infringement Claim”); and (ii) pay any settlement reached or final award, including reasonable attorney’s fees, for infringement, excluding any damages or awards arising out of or based on the amount of use that Owner makes of the Product or the revenue Owner receives from using the Product. As a condition of such defense or payment, Owner is required to (i) give Bidder prompt written notice of any Infringement Claim; (ii) provide Bidder with the sole control of the defense and/or settlement of the Infringement Claim; (iii) cooperate fully with Bidder in such defense or settlement. Owner may,

at its own expense, participate fully in the defense of any such Infringement Claim.

- (b) In the event Bidder becomes aware of a potential Infringement Claim, Bidder shall use its reasonable best efforts to avoid an interruption of Owner service and may (or in the case of an award of an injunction, shall) at its sole option and expense: (i) procure for Owner the right to continue using the alleged infringing Product(s); (ii) replace or modify the alleged infringing Product(s) with an equivalent product(s) so that Owner's use is non-infringing; or (iii) if the remedies under the foregoing clauses (i) and (ii) are not commercially feasible, require Owner to return the affected portion of the Product(s) and refund to Owner the depreciated value (as carried on the Owner's books) of such Product(s).
- (c) Bidder has no obligation or liability in respect to any Infringement Claim in the event that the affected Product: (i) is manufactured, designed or supplied by Bidder in accordance with any design or special instruction furnished by Owner; (ii) is used by Owner in a manner or for a purpose not contemplated by this Agreement or Bidder's Product documentation; (iii) is used or located by Owner in a country other than the country for which it was supplied; (iv) is used by Owner in combination with other products or applications not provided by Bidder under this Agreement, including any software developed by Owner through the permitted use of Products, provided that the Infringement Claim arises from such combination or the use thereof; or (v) is modified by Owner, provided the Infringement Claim arises from such modification. If Owner continues use of the affected Product notwithstanding Bidder's request to replace or modify pursuant to Section 6(b)(ii) or its requirement to return pursuant to Section 6(b)(iii), Bidder shall not be liable for such use. Owner shall indemnify Bidder against all liability and costs of defense, including reasonable attorneys' fees, for any and all claims against Bidder for infringement based upon any of the foregoing.
- (d) THE PROVISIONS OF THIS ARTICLE IV, SECTION 6 CONSTITUTE THE EXCLUSIVE RECOURSE OF EACH PARTY AND THE ENTIRE OBLIGATION AND LIABILITY OF EACH PARTY WITH RESPECT TO ANY CLAIM FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ”



Article V, Section 3:

Limitation of Liability. Any liability of Bidder arising from or relating to this Agreement, whether based on contract, equity, indemnity, tort (including Bidder's negligence), intended conduct, strict liability, or otherwise will be limited to Owner's actual, direct damages, and the amount of damages recoverable against Bidder for all events, acts or omissions shall not exceed, in the aggregate, the prices or fees then already paid by Owner to Bidder under the applicable statement of work (or purchase order) for the products or services that give rise to such liability. In no event shall either party be liable for any special, incidental, indirect or consequential damages in connection with this Agreement, whether based on action or claim in contract, equity, indemnity, tort (including negligence), intended conduct, strict liability or otherwise, even if such damages are foreseeable.

Article VII:

Force Majeure. Each party will be excused from performance hereunder (except for payment obligation) for any period and to the extent that it is prevented from such performance, in whole or in part, as a result of delays caused by the other party or an act of God, natural disaster, war, civil disturbance, court order, labor dispute, third party non-performance, or other cause beyond its reasonable control and which it could not have prevented by reasonable precautions, including failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment, and such non-performance will not be a default hereunder or a ground for termination hereof.