601 Pennsylvania Ave., NW
Suite 800
Washington, DC 20004
202-654-5900

July 27, 2017

**SUBMITTED ELECTRONICALLY VIA ECFS**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: **Report of *Ex Parte* Presentation**

*WT Docket No. 10-112, Amendment of Parts 1, 22, 24, 27, 74, 80, 95 and 101 To Establish Uniform License Renewal, Discontinuance of Operation, Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*

Dear Ms. Dortch:

On July 26, 2017, I sent by e-mail the attached *ex parte* letter to Erin McGrath, Legal Advisor to Commissioner Michael O'Rielly regarding the above referenced proceeding.

*/s/ Cathleen A. Massey*

Cathleen A. Massey
Vice President, Federal Regulatory Affairs

cc: (by e-mail)
Erin McGrath

601 Pennsylvania Ave., NW
Suite 800
Washington, DC 20004
202-654-5900

July 25, 2017

**SUBMITTED ELECTRONICALLY VIA ECFS**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: **Report of Oral *Ex Parte* Presentation**

*WT Docket No. 10-112, Amendment of Parts 1, 22, 24, 27, 74, 80, 95 and 101 To Establish Uniform License Renewal, Discontinuance of Operation, Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*

Dear Ms. Dortch:

On July 21, 2017, Russell Fox of Mintz Levin and I spoke with Roger Noel, Kathy Harris and Joyce Jones of the Wireless Telecommunications Bureau regarding the above referenced proceeding.

We explained that two of the procedures contemplated by the draft Second Report and Order would impose unnecessary burdens on the Commission and its licensees. *First,* based on the wording in the draft Second Report and Order, draft Section 1.949(d)(2) of the rules may be interpreted to require that commercial service geographic licensees may never fall below a final performance requirement in order to take advantage of the safe harbor renewal certification.[1/] Instead, they would be required to make the more burdensome renewal showing specified in draft rule Section 1.949(e).

T-Mobile has a strong record of meeting and exceeding its performance requirements and once it begins to provide service, it continues to do so. Nevertheless, like all carriers, T-Mobile's coverage, when considered on a license-by-license basis, may be interrupted in limited areas from time-to-time because of, for example, natural disasters like hurricanes. When that occurs, coverage levels for a particular license may temporarily drop below the level necessary to

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1/ Although not stated in the draft rule, the draft Second Report and Order states that in order to take advantage of the safe harbor, a licensee must state that it "*continuously* provided service to the public…, at or above the level required to meet the final construction requirement during the initial term of the license." *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112, Draft Second Report and Order, ¶ 10 (rel. July 13, 2017) (emphasis added).

establish compliance with a final performance requirement even though coverage remains strong in the remainder of the market. Under those circumstances, T-Mobile and others should still be able to take advantage of the safe harbor certification. The Commission should therefore clarify that a licensee may take advantage of the safe harbor certification if it continuously provides service at *substantially* the level required to meet the final construction requirement during the licensee's initial term, defining "substantially" as eighty percent or greater of the performance requirement level. This interpretation is in the public interest, because it will permit more licensees to take advantage of the safe harbor certification, reducing administrative burdens on the Commission and licensees, while providing the flexibility necessary for licensees to drop below performance requirement levels to address circumstances beyond their control.

*Second,* we pointed out that draft Section 1.949(f) of the rules may prohibit many licensees from providing the required certification and require the submission of "an explanation of the circumstances preventing such a certification and why renewal of the subject license is in the public interest."[2/] Unnecessarily increasing the number of licensees that cannot rely on the certification will impose a burden on licensees and the Commission. Yet, many licensees may be unable to make the required certification because of past rule violations that have been resolved through Commission consent decrees. In those cases, licensees often initiate compliance programs and other measures to ensure that future rule violations do not occur that are in the public interest. Licensees should therefore be able to make the required certification if the rule violation has been the subject of a consent decree. Doing so will have the twin benefits of allowing more licensees to use the certification and encouraging licensees to self-report rule violations for the purpose of entering into consent decrees. The Commission should therefore amend the proposed rule by adding the following wording to draft Section 1.949(f): "…a Regulatory Compliance Certification certifying that, except for any matter disclosed in any consent decree between the applicant and the Commission, it…[.]"

Pursuant to Section 1.106 of the Commission's rules, a copy of this letter has been submitted in the record of the above referenced proceeding and a copy has been provided by e-mail to the Commission staff with whom we spoke.

*/s/ Cathleen A. Massey*

Cathleen A. Massey
Vice President, Federal Regulatory Affairs

cc: (by e-mail)
Roger Noel
Kathy Harris
Joyce Jones

2/ *Id*. ¶ 41.