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March 19, 2015

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: NOTICE OF EX PARTE PRESENTATION
MB DOCKET NO. 14-90

Dear Ms. Dortch:

On March 16, 2015, representatives of the Minority Cellular Partners Coalition (“MCPC”) met with members of the Commission’s staff to discuss AT&T’s qualifications to acquire the licenses held by DIRECTV in the above-referenced proceeding. Participating in the meeting on behalf of the Commission were Philip Verveer, Senior Counselor to Chairman Wheeler, Maria Kirby, Legal Advisor to the Chairman, Charles Mathias of the Wireless Telecommunications Bureau, and Jamillia Ferris, Douglas Klein, Royce Sherlock and Stephen Spaeth of the Office of General Counsel. Representing MCPC were Claudia James and Peggy Binzel of The Podesta Group, Michael Pullara, attorney for members of MCPC, along with Thomas Gutierrez and the undersigned of LNGS.

The parties discussed the allegations, set forth in MCPC’s letter of March 4, 2015, that AT&T violated § 222(c)(1) of the Communications Act of 1934, as amended (“Act”), and § 1.20003 of the Commission’s Rules, when it voluntarily allowed the National Security Agency (“NSA”) to have access to telephony and Internet metadata, and telephony and Internet content. Also discussed was AT&T’s claim that MCPC’s allegations are “outside the scope of the FCC’s investigative powers.” Letter from Maureen R. Jeffreys to Marlene H. Dortch, MB Docket No. 14-90, at 2 (Mar. 11, 2015) (quoting *AT&T, Inc. and BellSouth Corp.*, 22 FCC Rcd 5662, 5757 (2007)).

We argued that AT&T cannot rely on the Commission’s claim in 2007 that the classified nature of the NSA’s surveillance activities prevented the agency from investigating the NSA’s collection of protected, private telephone records. The Commission made that claim before the Edward Snowden revelations, before President Obama’s decision to declassify information about the NSA’s warrantless surveillance program, and before the details of AT&T’s complicity in that program became readily available on the Internet. We pointed out that MCPC’s allegations were principally based on facts it gleaned from two sources: the *Unclassified Report on the President’s Surveillance Program* that the Offices of the Inspectors General submitted to Congress in July 2009 and the *Working Draft ST-09-002* prepared by the NSA’s Office of the Inspector General in March 2009 and first published by The Guardian in June 2013.

We noted that the Commission has the explicit authority under § 229(c) of the Act to

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investigate whether AT&T complied with the rules the Commission adopted to implement the systems security and integrity (“SSI”) provision of the Communications Assistance for Law Enforcement Act (“CALEA”). The Commission can investigate AT&T’s compliance with the CALEA rules without ordering the production of classified information. It need only read the declassified or publicly-disclosed documents cited by MCPC.

We pointed out that AT&T did not deny that it gave the NSA access to customer proprietary network information (“CPNI”) and call-identifying information without appropriate legal authorization (either a FISA Court order, a certification under oath by the U.S. Attorney General, or a national security letter from the FBI Director). That Congress found it necessary in 2008 to retroactively immunize AT&T from civil liability for assisting the NSA attests to the fact that AT&T participated in an unlawful surveillance program without appropriate legal authorization.

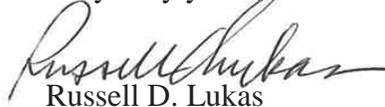
We noted that, in the *Open Internet Order* released last week, the Commission reaffirmed its commitment to protect the privacy of CPNI through the continued enforcement of § 222 of the Act. We also pointed out that the Enforcement Bureau has assessed \$20,000 forfeitures against carriers that failed to file their annual CPNI certifications on time, *see, e.g., Annual CPNI Certification - Omnibus Notice of Apparent Liability for Forfeiture*, 24 FCC Rcd 2299 (Enf. Bur. 2009), and that it entered into a consent decree with Verizon last year for \$7.4 million to resolve an investigation into Verizon’s violation of the CPNI rules. *See Verizon Compliance with the Commission’s Rules and Regulations Governing CPNI*, 29 FCC Rcd 10305 (Enf. Bur. 2014). Considering the Commission’s actions to protect CPNI, we argued that the Commission should not continue to ignore the well-documented fact that AT&T gave the NSA unauthorized access to CPNI and other call-identifying information.

Finally, we suggested that the public’s confidence in the privacy of their communications has been shaken by the revelations concerning the NSA’s warrantless surveillance program. A modicum of that confidence could be restored if the Commission takes action to ensure that AT&T will never again give the Government unauthorized access to personal information protected by § 222 of the Act and § 105 of CALEA. *See* 47 U.S.C. § 1004. At a minimum, the Commission should grant its consent to the AT&T/DIRECTV merger on the condition that AT&T submit a detailed SSI plan to the Commission within 90 days that is subject to a public notice-and-comment proceeding.

Submitted herewith is the handout that we distributed at the meeting.

This letter is being filed electronically pursuant to § 1.1206 of the rules. Should any questions arise with regard to this matter, please direct them to me.

Very truly yours,



Russell D. Lukas

cc: Philip Verveer
Maria Kirby

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Charles Mathias

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