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NOTICE OF EX PARTE PRESENTATION

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Washington, DC 20554

Re: MM Docket No. 98-43

Dear Ms. Salas:

Transmitted herewith electronically for filing is a copy of the written ex parte presentation made to the Office of Chairman William E. Kennard by a representative of U.P. Wireless, LLC, at their meeting on August 24, 1999.

Should there be any questions concerning this filing, please contact the undersigned directly.

Very truly yours,

s/ Kenneth E. Hardman

Kenneth E. Hardman

Enclosure

SUMMARY OF U.P. WIRELESS PETITION FOR RECONSIDERATION

- ! The NPRM did *not* propose to apply the new policy to existing permits beyond their initial term; that was proposed and promulgated for the first time in the Report & Order itself.
- ! The new construction permit policies should not be applied to existing LPTV permit holders, especially those associated with U.P. Wireless, LLC and affiliated enterprises engaged in developing wireless cable systems with LPTV channels.
 - ! More than 200 construction permits are affected in 22 markets, which will automatically expire between May and November 1999 under the Report & Order. It is physically impossible to construct and license all of those stations in that time; and no additional funding can be raised in the meantime due to the new policies promulgated in the Report & Order.
 - ! Termination of these permits would deprive rural America of substantial public benefits, including increased diversity of programming, competition for conventional coaxial cable television systems, and high speed internet access.
 - ! It has been a continuing struggle to have the staff recognize the unusual aspects of LPTV wireless cable systems for application processing purposes, with the result that there really has not been *any* unencumbered time available for constructing the systems, much less the three years contemplated by the new policy.
- ! The Report & Order's newly developed concept of unencumbered time to construct does not fairly take into account the particular and unusual obstacles faced to date by the proposed LPTV wireless cable systems.
 - ! The various applications have been processed on a staggered or random *individual* basis, and not as systems, leaving substantially less time to construct as a practical matter than the nominal length of the term of the permits themselves would suggest.
 - ! Limited filing windows since 1994 have prevented markets from filling out their channels required for viable wireless cable systems.
 - ! To compensate for the lack of filing windows the Commission has employed STAs extensively in LPTV which are effectively threatened with cancellation by the new policy.
 - ! Regulatory authorization of digital LPTV still has not caught up with marketplace imperatives for this technology.
- ! If the Commission wants to be fair to existing LPTV permit holders without devoting substantial staff resources to deciding which particular permits merit further extensions, it should simply extend *all* existing permits for three years from the effective date of the

order on reconsideration of the Report & Order.