April 19, 2006

Mr. Thomas Navin
Chief, Wireline Competition Bureau
Federal Communications Commission
Washington, D.C. 20036

Re: *Ex Parte* Communication
Universal Service Assessment- Automotive Telematics
CC Docket Nos. 96-45, 98-171, 90-571, 92-237,
99-200, 95-116 and 98-170

Dear Mr. Navin:

On behalf of the ATX Group, Inc., this letter addresses the devastating effect the proposed Universal Service Fund (USF) contribution structure would have on automobiles equipped with core telematics services and enhanced response to highway emergencies. The proposal, $1.00 per month per phone number, would impose on automotive telematics a USF assessment that approaches the cost of the telecommunications service charged by the carrier. The fee would violate the law's requirement that universal service contributions be "equitable and nondiscriminatory" and halt the broader rollout of telematics-based safety and security to mass market vehicles.

ATX provides core automotive telematics services to several Original Equipment Manufacturers (OEM). Core telematics services include GPS satellite location-enhanced automatic collision notification; dedicated, in-vehicle "MayDay" button to summon emergency assistance; and vehicle theft recovery. The service does not include hands-free Personal Calling or Concierge Services. Neither ATX nor its automotive OEM customers offer a Personal Calling Service as part of any telematics package. The core service allows a vehicle occupant to communicate with a call center to request assistance. Additionally, upon deployment of a vehicle's airbag and/or activation of emergency pretensioners in seat belts, a signal is transmitted to the call center, which will respond to the automatic crash notification (ACN). Whether by call or ACN signal, a vehicle's transmission is only to the call center and only the call center may place a call to the vehicle. The technology uses the cellular network, with GPS location capability, and each activated vehicle is assigned one telephone number.

An overwhelming number of vehicles have no communication with the call center during a year. Of those who do communicate with the call center the average call is of very short duration. The presence of a phone number reflects neither network use nor the ability to communicate outside the call center and vehicle. A consumer purchases core telematics to summon assistance in an emergency. As detailed below the proposed USF assessment will have substantial

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impact on consumer behavior, will encourage arbitrage opportunities and be devastating to bringing telematics to all vehicles.

In a hypothetical 350,000 telematics equipped vehicle fleet, the proposal to assess $1.00 per month against each telephone number results in a USF contribution of $350,000 per month. The current USF fee is approximately $10,000. The proposed USF assessment approaches the cost paid for the airtime and the underlying services provided by the carrier. Notably, the carrier's services encompass not only airtime, but its expertise and administrative assistance in assigning numbers, arranging for toll free platforms, initializing a vehicle's capability to transmit and receive, maintaining databases and overall assisting in the delivery of telematics services.

The Communications Act of 1934, as amended, section 254(b)(4), establishes the standard by which the Commission may assess a fee to support the universal service program. That standard requires that the contribution be "equitable and non discriminatory." A contribution mechanism that approaches the cost charged and revenue collected by the carrier for its services clearly violates this standard.

In *Texas Office of Public Utility Counsel v. FCC,* 183 F.3d 393, 431 (CA 5 1999), the Court of Appeals for the Fifth Circuit ruled that a universal service fee that exceeded a carrier's revenue violates the law's equitable and nondiscriminatory standard. The Court held that where a carrier was assessed a fee in excess of its interstate revenues, the underlying premise required of any contribution mechanism was violated- there must be a fairness in the allocation of contribution duties. It characterized the assessment as a "heavy inequity" and that the cost imposed was "prohibitive."

The Fifth Circuit addressed the circumstances where a carrier had minimal interstate traffic and significant international traffic. The core telematics circumstance is even more egregious. Here, with the ability only to communicate between call center and vehicle, and where most consumers make no calls, network use is nominal and confined. The fundamental of telematics is the ability to transmit a call or signal to the call center in those infrequent circumstances when assistance is needed. The current USF contribution model, based on revenue, recognizes and accommodates the vast disparity between general consumer use of the cellular network and that of core telematics equipped vehicles.

And it is here that the Fifth Circuit decision, and the Commission's own rules and policies, counter assessing core telematics vehicles a $1.00 per phone number monthly fee. A fundamental principle emerges- a wide disparity between users means that each cannot be assessed the same fee. The degree of access to and use of the network are critical elements in determining whether the assessment is "equitable and nondiscriminatory." The proposed phone number assessment structure does not comprehend that while automotive telematics is assigned a large number of phone numbers, the extent and frequency of use of the network is extremely confined. A contribution model must recognize and accommodate such disparity. See *In the Matters*

of the Federal-State Joint Board on Universal Service and Access Charge Reform, 15 FCC Rcd 1679, FCC 99-290 at paragraphs 23-25 (1999).

Assessing a $1.00 monthly fee on each telematics vehicle is inequitable and discriminatory. Under this assessment, ATX's customers would see their monthly bills increase nearly 3,000%, approaching the cost of the wireless service. Even under the 50% discount proposed by the cellular carriers for their "buckets of minutes" customers, where several numbers are assigned yet only one bill is rendered, the proposed USF fee to core telematics vehicles is still enormous. Such an assessment will disrupt a market that today is delivering an important public safety feature -- the ability to locate expeditiously and dispatch aid to individuals involved in an in-vehicle emergency or collision – ubiquitously and without limitation to the technical capabilities of local Public Safety Answering Points.

As telematics transitions to the broader and more price sensitive mass market vehicle, thereby promoting ACN capability in every vehicle, the added cost of the proposed USF contribution will be devastating. This market will likely be served with a low-cost, data-centric service, priced at less than half the cost of today's average telematics subscription. It will encompass only automatic collision notification where airtime is used only in the event of a collision. Under the proposed USF numbers plan, consumers opting for the annual plan, which hypothetically is envisioned to be priced between $75-$125, would be saddled with an additional $12 fee for a service that is likely never to result in an interstate call. And, the USF fee is but one of several government assessments, which include regulatory fees, sales and excise taxes. The expansion of location-based automatic collision notification and emergency response will be halted, predominantly affecting rural areas where these services would have their greatest impact on highway deaths and injuries. The Commission's regulatory decision will be profound; it will dictate a market decision that should be left to the consumer and essentially create a greater level of emergency response to those who drive more expensive vehicles.

In summary, a USF contribution model imposing a $1.00 fee on each telematics-equipped vehicle, a vehicle that may never place a call, is inequitable and discriminatory.

It violates the law's standards; we cannot envision it surviving a challenge. ATX urges the Commission to adopt a model applicable to core telematics that reflects the current contribution level or to exempt it from any contribution.

ATX appreciates very much your consideration of this matter. A copy of this letter will be filed with the Commission' Secretary in the appropriate dockets.

Respectfully,

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