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Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth St. SW
Washington, DC 20554

**Re: WC Docket No. 06-122, Universal Service Contribution Methodology;
CC Docket No. 96-45, Federal-State Joint Board on Universal Service**

Dear Ms. Dortch:

A group of automotive telematics companies represented by William Ball of OnStar, Ari Fitzgerald and the undersigned of Hogan & Hartson (on behalf of OnStar), Matthew Brill of Latham & Watkins (on behalf of Toyota), John Logan (on behalf of ATX), Jonathan Miller of Volvo Group North America, and Steve Perry of Dutko Worldwide (on behalf of HUGHES Telematics), made separate *ex parte* presentations yesterday regarding the proceedings listed above to Amy Bender, legal advisor to Chairman Martin; Commissioner Jonathan Adelstein and his legal advisor, Scott Bergmann; Nicholas Alexander, legal advisor to Commissioner McDowell; and Julie Veach, Jennifer McKee, and Alexander Minard of the Wireline Competition Bureau.

The telematics industry representatives discussed the draft orders attached to the Further Notice of Proposed Rulemaking ("FNPRM") released on Nov. 5, 2008, and explained that, if the Commission were to adopt a phone number-based universal service fund ("USF") assessment scheme in general, it should not apply a per-phone number charge to the services supplied to telematics companies. We emphasized the following points:

- Telematics is an information service that is vital to public safety. Telematics service uses transceivers built into vehicles to provide real-time information regarding accidents, airbag deployments, and other emergencies to first responders/public safety answering points, with precise GPS-based location information.
  - The Commission has ruled that telematics is not a commercial mobile radio service, is not comparable to or substitutable for wireless telecommunications service, does not

enable users to place calls to or receive calls from the public switched telephone network, and is exempt from E-911 requirements.

- Telematics is not and never has been regulated by the FCC as a form of telecommunications. Accordingly, USF contributions should be paid by the carriers that provide telecommunications services to telematics companies and passed through via surcharges, rather than being assessed directly on telematics companies, which are business end-users.

• A per phone-number monthly USF surcharge on telematics phone numbers, as proposed in all three draft orders, would have a devastating impact and would be grossly unfair.

- The USF fees paid indirectly by telematics companies (e.g., $0.85 to $1.00 per month) would vastly exceed the telecom revenues associated with the service. The Fifth Circuit reversed the FCC's original contribution mechanism in 1999 for precisely the same reason. *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999).

- A cost increase of this magnitude would significantly reduce the usage of these life-saving emergency response services, due to consumers' price elasticity of demand for these services, and would deter automakers from offering these important services on future vehicles.

- There is no public benefit that would justify the resulting harm to public safety.

• Instead, the Commission could assess USF contributions on carriers that provide service to telematics companies as a per-minute fee equivalent to the monthly per-phone number charge – the same solution proposed in the draft orders for prepaid wireless services. Alternatively, services provided to telematics companies could be assessed based on a percentage of telecommunications revenues, as proposed for services provided to business end-users in the draft orders in Appendices A and C to the FNPRM.

If you have any questions, please feel free to contact me.

Respectfully submitted,

David L. Sieradzki

cc: Commissioner Jonathan Adelstein
Amy Bender
Scott Bergmann
Nicholas Alexander
Julie Veach
Jennifer McKee
Alexander Minard