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February 5, 2010

Robert M. McDowell, Commissioner
Federal Communications Commission
Washington, D.C. 20554

In re: WT Docket Nos. 94-147 and 97-56
James A. Kay, Jr., and Marc D. Sobel

Dear Commissioner McDowell:

Thank you for taking the time out of what I know is a busy schedule to meet with me and Governor George Allen on Monday, January 25, 2010, to discuss the pending *Motion to Modify Sanction* in the above-referenced matter. The Licensees propose an alternative sanction that satisfies the regulatory objective of the original judgment, preserves the integrity of the Commission's enforcement program and policies, and most importantly, provides much needed spectrum relief for public safety communications in the Los Angeles area—a major public interest benefits that will not be realized under the original sanction.

Given the substantial public interest benefits and an invaluable opportunity to improve the capability, reliability, and interoperability of first responder communications support systems, we were quite concerned upon learning that an item in this matter had been placed on circulation in November. Licensees have taken pains to craft a proposal that will satisfy the regulatory objectives of the original sanction, while also providing additional and substantial public interest benefits. Although one might question whether this goal has been met, Licensees have continuously made clear their work with Commission staff in an effort to adjust the specific terms and conditions to satisfy regulatory concerns and objectives.

We respectfully submit that rejection of this proposal without first providing a realistic opportunity for genuine mutual discussion would be an abdication of the Commission's legislative mandate to serve the public interest, and an inexplicable squandering of a major benefit for first responder and other public safety communications. Another important consideration is that there are now three new Commissioners who have not previously had an opportunity to study this proposal in depth. Given this major change in the makeup of the Commission and in view of the time that has passed, we also want the opportunity to renew our discussions with the two veteran Commissioners.

Insofar as this matter has apparently been on circulation for several weeks, we urgently seek your assistance. As we requested during our meeting, we urge you not to vote for adoption of any adverse order prior to full consideration of this matter in a proper environment. By proper environment, we mean one in which the proposal or some variation of it will be considered by Commission staff with an attitude that is genuinely open to the possibility of an alternative arrangement. Due to the procedural posture of this matter, staff cannot be expected to pursue, much less initiate, such a process unless the Commission directs or otherwise signals it to do so. To provide that opportunity, in addition to withholding your vote for any adverse order, we respectfully ask that you invoke any proper procedures or steps available to you to assure that you colleagues also defer action, or at least to provide additional time to consider the matter more.

Very truly yours,

A handwritten signature in black ink that reads "Robert J. Keller". The signature is written in a cursive, flowing style.

Robert J. Keller
Counsel for James A. Kay, Jr., and Marc D. Sobel

cc: Angela E. Giancarlo
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