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January 21, 2011

VIA ELECTRONIC FILING

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

Re: **EX PARTE PRESENTATION**

PS Docket No. 06-229

WT Docket No. 06-150

Dear Ms. Dortch:

The 700 MHz D Block (758-763/788-793 MHz) continues to remain idle while the Federal Communications Commission (“FCC” or “Commission”) seeks additional capacity to meet broadband needs. Recent developments related to the use of the public safety broadband spectrum (763-768/793-798 MHz) reinforce why the Commission should proceed immediately with a rulemaking to license the D Block for commercial operations as envisioned in the National Broadband Plan.^{1/}

On May 12, 2010, the Commission issued an Order permitting several public safety entities to use the 700 MHz public safety broadband spectrum.^{2/} On December 10, 2010, the Public Safety and Homeland Security Bureau (“Bureau”) issued an Order approving a set of technical requirements for those public safety entities subject to the *Waiver Order*. In response, the Utilities Telecommunications Council (“UTC”) submitted a petition for reconsideration arguing that utilities should be permitted to use the public safety broadband spectrum as part of arrangements with public safety entities to build a 700 MHz public safety broadband network.^{3/}

^{1/} *Connecting America: The National Broadband Plan*, The Federal Communications Commission at 76 (March 2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (recommending, “[t]he FCC should auction the 10 megahertz Upper 700 MHz D Block for commercial use that is technically compatible with public safety broadband services”).

^{2/} *See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, Order, 25 FCC Rcd 5145 (2010) (“*Waiver Order*”).

^{3/} *Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, Petition for Reconsideration of the Utilities Telecom Council, PS Docket No. 06-229 at 2 (filed Jan. 11, 2011).

UTC's request reiterates its position – supported by many public safety entities – expressed in response to the Bureau's September 15, 2010 Public Notice soliciting comments on how the Commission should address additional requests for early use of the public safety 700 MHz broadband spectrum.^{4/} There, UTC and others urged the Commission to permit entities ineligible under the Communications Act to use public safety spectrum in exchange, in part, for assistance in building out a public safety system.

The willingness of public safety entities to accept utilities as their partners in the development of 700 MHz public safety spectrum demonstrates several critical points. *First*, the current allocation of 700 MHz public safety spectrum is apparently sufficient to meet public safety requirements *and* the requirements of others. If the current spectrum allocation can support both public safety and non-public safety needs, then certainly no additional spectrum is needed for public safety broadband operations. The petitions for reconsideration which seek the use of the 700 MHz public safety broadband spectrum for *fixed use* similarly demonstrate that the current public safety broadband allocation is sufficient.^{5/} The 700 MHz broadband allocation is designed to support interoperable broadband communications. If some of that spectrum can be re-purposed for fixed use, it is clear that no additional spectrum is required for interoperable broadband communications.

^{4/} *Public Safety and Homeland Security Bureau Seeks Comment On Petitions for Waiver to Deploy 700 MHz Public Safety Broadband Networks*, Public Notice, 25 FCC Rcd 13155 (2010); Comments of the Utilities Telecom Council, PS Docket No. 06-229 at 2 (filed Oct. 18, 2010) (“The FCC should encourage such partnerships between utilities and public safety in order to promote the deployment of public safety broadband networks and to support utility communications that together help to protect the health and safety of the public at large, as well as promote homeland security”); Comments of the State of Maryland, PS Docket No. 06-229 at 9 (filed Oct. 18, 2010) (“Maryland believes that it is in the best interests of first responders, as well the country, for the Commission to provide the flexibility that allows authorized early deployers, and inferentially other deployers in the future, to consider the potential of relationships with a broad base of private sector entities which benefit public safety by providing financial resources and operational flexibility that has the end result of supporting the deployment of the nationwide public safety broadband network at the lowest practical cost to the taxpayer”); Comments of the Association of Public-Safety Communications Officials, International, PS Docket No. 06-229 at 2 (filed Oct. 18, 2010) (“APCO generally supports public/private partnerships for public safety communications systems, especially with critical infrastructure entities that have safety-related missions. We also believe that a viable public safety broadband network may require joint ventures with commercial entities”).

^{5/} *See, e.g., Request for Waivers of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, Petition for Reconsideration of City of Charlotte, NC, District of Columbia, Iowa Statewide Interoperability Communications System Board, State of New Jersey, City of Mesa, AZ, State of New Mexico, State of Oregon and the City of Seattle, WA, PS Docket No. 06-229 at 2 (filed Jan. 10, 2011) (“The better policy is to allow both fixed and mobile operations on a primary basis, empowering operators to make reasonable judgments as to the applications that will run on the networks so that they may adapt to meet evolving requirements”).

Second, the willingness of public safety entities to accept utilities' assistance highlights the most critical need of public safety entities – funding. Public safety entities simply have no resources to construct the spectrum already designated for a 700 MHz broadband network, let alone any additional spectrum. Indeed, recent status reports submitted by entities covered by the *Waiver Order* demonstrate that these entities cannot proceed to construct and implement the systems contemplated by the *Waiver Order*.^{6/}

Third, public safety entities' willingness to share a network with others demonstrates the feasibility of the approach envisioned by the National Broadband Plan for an incentive based public-private partnership. If public safety entities are willing to cooperate in the construction and operation of a network with utilities, they should be similarly willing to extend the same cooperation to commercial carriers, whose networks will offer greater capacity and coverage. Among the many other additional benefits of sharing a network with commercial operators, public safety entities will also be able to purchase feature rich state-of-the-art handsets at significantly lower prices than current public safety equipment.

The Commission should, therefore, propose rules for the commercial use of the D Block as envisioned by the National Broadband Plan. Commercial use of the D Block consistent with the National Broadband Plan will address first responders' most pressing need – funding and

^{6/} Iowa Statewide Interoperable Communications Board, Report, PS Docket No. 06-229 (filed Jan. 13, 2011) (“As a result of not receiving BTOP grant funds, the ISICSB and officials in Iowa will need to re-examine funding solutions”); City of Seattle, Report, PS Docket No. 06-229 (filed Jan. 13, 2011) (“The City of Seattle did not receive BTOP grant funding. The City is currently re-evaluating its funding strategy”); New York City Quarterly Status Report, PS Docket No. 06-229 (filed Jan. 13, 2011) (“Since New York City’s BTOP application, which was considered the primary funding source for this project, was not approved, New York City representatives continue to evaluate alternative funding sources”); Quarterly Report for 700 MHz Broadband Deployment of the City of Mesa, AZ, PS Docket No. 06-229 (filed Jan. 11, 2011) (“Due to the unsuccessful attempt to secure BTOP grant funding, the City of Mesa is planning to deploy a scaled down version of the original LTE system plan”); 700 MHz Public Safety Broadband Quarterly Report of the District of Columbia, PS Docket No. 06-229 (filed Oct. 19, 2010) (“The District is working to identify an alternative funding source”); State of Hawaii Broadband Air Interface for Public Safety Quarterly Status Report, PS Docket No. 06-229 (filed Oct. 14, 2010) (“We failed in our attempt to acquire a grant through the BTOP grant program. We will explore other funding opportunities”); Second Quarterly Report of the City of Boston, MA, PS Docket No. 06-229 (filed Oct. 14, 2010) (“Unfortunately, the lack of the highly anticipated BTOP grant will greatly hinder our ability to deploy the network as quickly and aggressively as we had originally planned. The City is now investigating options for moving forward in the absence of the grant”).

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partnership opportunities for the construction and operation of a public safety broadband network without sacrificing any capacity on that network for non-public safety operations.^{7/}

Sincerely,

/s/ Kathleen O'Brien Ham

Kathleen O'Brien Ham
Vice President, Federal Regulatory Affairs

cc: (via e-mail)
James Arden Barnett, Jr.
Jennifer Manner

^{7/} If utilities have spectrum requirements, they should meet them, like any other commercial entity, by securing spectrum capacity from commercial providers or purchasing spectrum in the marketplace or in a Commission auction.