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July 1, 2011

**VIA ELECTRONIC MAIL**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Fourth Further Notice of Proposed Rulemaking, WT Docket No. 06-150, PS Docket No. 06-229, WP Docket No. 07-100

Dear Ms. Dortch:

This is to notify you, pursuant to Section 1.1206 of the Commission's Rules, that on June 29, 2001 the undersigned along the following representatives of the Edison Electric Institute (EEI)—Aryeh Fishman (Director Regulatory Legal Affairs.), Greg Obenchain (Manager, Distribution Operations and Standards) and Mark Gray (Manager Transmission Operations)—met with Austin Schlick, Jennifer Manner, Julie Veach, David Horowitz, Andrea Kearney, Erika Olsen, Dan Ritchey, Genaro Fullano, Pat Amodio and Brian Hurley of the Commission staff in connection with the above-referenced proceeding.

The purpose of the meeting with to discuss EEI's position, as set forth in it Comments<sup>1</sup> and Reply Comments<sup>2</sup> filed herein, that investor-owned electric utilities (IOUs) could be both eligible users and eligible licensees of 700 MHz public safety broadband spectrum under Section 337 of the Communications Act. EEI's representatives informed the Commission staff that the Commission had been correct when it initially determined that under appropriate circumstances utilities may be eligible licensees of the spectrum.<sup>3</sup> They went on to state that regardless of this question, Section 337 permits IOUs to have access to the spectrum on a shared or secondary basis as long as the principal use remains for public safety purposes. EEI submitted that the Commission should not be bound by it tentative conclusions particularly when these were at variance with its earlier pronouncements.<sup>4</sup>

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<sup>1</sup> EEI Comments (filed April 11, 2011).

<sup>2</sup> EEI Reply Comments (filed May 10, 2011).

<sup>3</sup> EEI Comments at 4.

<sup>4</sup> *Id.* at 7-8.

EET's representatives pointed out that permitting IOUs to access this spectrum would be consistent with the National Broadband Plan's observation that such public/private partnerships would be an integral part of a viable framework for enabling the financing of an interoperable public safety broadband network. Such access would permit IOUs the certainty necessary to justify the investment.

More specifically, EET's representatives noted that the first prong of Section 337(f)—purpose of the use—would be met as long as the spectrum remained used principally for public safety purposes. The question of how to define "principal" use should in the first instance be left to the IOUs and the public safety entities to define. The Commission could set forth some general guidelines.

The Section's second prong—eligibility of the entities involved—would likewise be met if the IOUs' access to the spectrum was governed by a negotiated agreement between the IOU and a properly authorized public safety entity. This entity could be either a wholesale entity or an individual public safety body.

The above-referenced agreement would also meet Section 337(f)'s third prong—non-commercial non-public use—given the IOUs status as critical infrastructure industries (CII) these services are not commercially available to the public.

In further support of these points, EET's representatives indicated that IOUs are certified and regulated by state utility commissions and are subject to both broad and unique public interest obligations. Moreover, both Congress in the context of adopting Section 309, and the Commission in the context of implementing the Section, have recognized that such utility services are private in nature, non-commercial, and offered to protect the safety of life, health and property.<sup>5</sup> Consequently, to the extent that the Commission was search for a limiting principle, so as not to "taint" a public service entity's use of the spectrum, shared spectrum access could be limited to CII entities.

Please feel free to contact the undersigned if you have any questions.

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<sup>5</sup> *Id.* at 10.

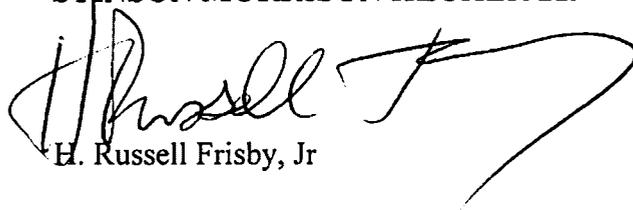
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Sincerely,

**STINSON MORRISON HECKER LLP**

A handwritten signature in black ink, appearing to read "H. Russell Frisby, Jr.", with a large, sweeping flourish extending to the right.

cc: Austin Schlick,  
Jennifer Manner  
Julie Veach  
David Horowitz  
Andrea Kearney  
Erika Olsen  
Dan Ritchey  
Genaro Fullano  
Pat Amodio  
Brian Hurley

HF:SMH