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## BY HAND DELIVERY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

Re: Docket 10-112  
Notice of Ex Parte Meeting

Dear Ms. Dortch:

We write to respond to the ex parte presentation made by counsel for Green Flag Wireless, LLC and two other parties (collectively, "Green Flag"), submitted on August 1, 2011 in the captioned proceeding.

Horizon has been served with a copy of the WCA Coalition's response to the Green Flag ex parte notice, and agrees entirely with the WCA's position therein set forth. Yet Horizon also believes that comment on certain Green Flag statements that uniquely impact upon Horizon is warranted, and thus is presented below.

In Green Flag's second paragraph, as part of a purported effort to respond to a request for judicial support for the "view that substantial service is required for renewal", Green Flag cited Citizens Communications Center v. FCC, 447 F. 2d 1201, 1213 (D.C. Cir. 1971). More specifically, Green Flag asserted that *Citizens* stands for the proposition that "[I]ncumbant licensees should be judged primarily on their record of past performance. Insubstantial past performance should preclude renewal of a license."

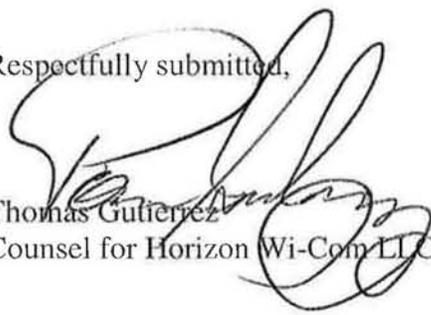
Horizon does not take issue with the language quoted by Green Flag but notes that it is *dicta* being conveniently presented as if it addressed the substantive point being argued – but it clearly does no such thing. Furthermore, Horizon submits that Green Flag cannot have it both ways, at

least not with respect to its challenge to Horizon. For if, as Green Flag tells the Commission through its ex parte filing, incumbent licensees are to be judged by their prior performance, and only insubstantial past performance precludes license renewal, then it effectively concedes that its attack on Horizon is misplaced. This is because Horizon has complied with the Commission's longstanding substantial service requirements. The staff first held this to be the case. Then the Mobility Division confirmed that position.

In fact, *Citizens* – which is the sole judicial case citation that Green Flag could provide to the Commission -- actually speaks even more clearly to the issue of prior performance and renewal than Green Flag told the Commission. Specifically, Judge Wright there explained that “superior performance should be a plus of major significance in renewal proceedings” and “as Ashbacker recognizes, in a renewal proceeding, a new applicant is under a greater burden to ‘make the cooperative showing necessary to displace an established licensee’”. *Citizens*, at 1213, citing *Ashbacker v FCC*, 326 U.S. 327, 332 (1945).

That Horizon provided substantial service has been determined by the staff, and confirmed by the Mobility Division. That such substantial service is “superior” is clear from the fact that, by virtue of the Commission having granted extensions of time to construct, there was no need to do anything prior to license construction. Yet Horizon did much more than required – and the Commission staff has twice recognized that such efforts constituted substantial service. This is the very definition of “superior” service and even if one assumes for the sake of argument that there is otherwise any Green Flag right to a comparative consideration (which there is not), and this would constitute a basis for granting to Horizon a dispositive “expectancy of renewal” which could not be overcome by challenges.

Respectfully submitted,



Thomas Gutierrez  
Counsel for Horizon Wi-Com LLC