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September 19, 2012

## **FILED VIA ECFs**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, D.C. 20554

**Re: Ex Parte Notification**  
**WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135;**  
**WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45;**  
**WC Docket No. 03-109; WT Docket No. 10-208**

Madam Secretary:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, we hereby provide you with notice of an *ex parte* presentation made in connection with the above-captioned proceedings.

On Monday, September 17, 2012, Jonathan Foxman, CEO of MTPCS, LLC d/b/a Cellular One, ("MTPCS"), Julia Tanner, General Counsel of MTPCS, and the undersigned, Brooks Harlow of Lukas, Nace, Gutierrez & Sachs, LLP, counsel for MTPCS, met with Carol Matthey, Deputy Bureau Chief of the Wireline Competition Bureau ("WCB"); Amy Bender, Deputy Division Chief of the Telecommunications Access Policy Division of the WCB ("TAPD"); and Theodore Burmeister, Senior Attorney Advisor of TAPD; to discuss the Petition for Reconsideration filed by MTPCS in the above dockets on December 29, 2011 ("Petition").

At the meeting, the contents of the Petition were discussed, with the focus on the unintended, unfair, and retroactive effect created by the application of the FCC's freeze and cap in Montana due to the unique 98% population coverage requirements that state imposes on CETCs. MTPCS noted that the Petition received support from the Montana Public Utility Commission, among others, and essentially no opposition and the single opposition seemed to

have inadvertently misunderstood the situation. NASUCA stated, “Montana may be willing to waive the coverage requirements or provide state Universal Service Fund support to eliminate the harms espoused,” but, respectfully, that suggestion is too late as MTPCS has already completed the build requirement in good faith.

In response to a question, MTPCS responded that waiver petitions filed by ILECs are distinguishable from the MTPCS petition because the five year build requirement imposed millions of dollars of uncompensated investment burden uniquely on Montana CETCs. No ILECs have faced such extensive build requirements in recent memory. Nor have ILECs suffered not only a precipitous drop in support rather than the intended cap in 2008, but also an unexpected new reduction in addition to those reductions anticipated by the Commission and reflected in its deliberate decision making in the above-referenced rulemaking proceedings. The reduction in support for Montana CETCs stems from the unique construction requirement in that state, and was not known, considered, addressed nor intended by the Commission. It is unlike the agency-contemplated reductions applied to support for CETCs and ILECs in general. It is not an across-the-board reduction with certain effects for carriers in *any* states that benefited in the past from large per-line subsidies. Instead, this inequitable result stems from the unique law and regulations in a single state.

Further, in the meeting, MTPCS pointed out that Montana’s CETCs provide rate plans and customer services that they have designed for the customers in that state – and which will no longer exist, along with CETCs’ coverage and numerous jobs, if their services are withdrawn. The consumers of Montana, as represented by their state Public Service Commission, have supported the MTPCS petition. Delaying action on the petition is contrary to the public interest.

In the meeting, the undersigned addressed questions regarding the potential impact on support of granting the petition, and reviewed a PowerPoint handout clarifying the operational mechanics of the relief requested and a spreadsheet showing cost of the 50 most unprofitable cell sites of MTPCS in Montana. The handout is attached and the spreadsheet is filed under separate cover with a request for confidential treatment.

Finally, to clarify regarding an issue raised by Commission staff in the meeting – whether other wireless networks in Montana were built with CETC support –the answer is yes. Although they recently stopped receiving CETC support, those networks in the past did utilize such support. Moreover, those networks may soon start receiving such support again, if Connect America Fund support can be used for price cap carriers’ wireless affiliates.

Ms. Marlene H. Dortch  
September 19, 2012  
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We trust you will find this information useful. If you have any questions or require any additional information, please contact undersigned counsel directly.

Respectfully submitted,

A handwritten signature in cursive script that reads "Brooks E. Harlow".

Brooks E. Harlow

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# CELLULARONE<sup>®</sup>

Petition for Reconsideration of  
MTPCS, LLC  
WC Docket 10-90, et al.

Ex Parte Presentation of MTPCS  
September 17, 2012

# Qualification for Alternative Calculation – Narrow Exception

- In states that conditioned CETC designation on a specific network coverage requirement
- For CETCs whose July 2012 20% CAF phase-down would reduce the CETC's support at least 25% below the capped support it would receive in 2012 absent CAF freeze

# Proposed Alternative Calculation

- Frozen baseline calculation would be based on:
  - line counts as of September 30, 2011 and
  - CETC cap reduction factors and per line support amounts as of December 31, 2011

# Proposed Alternative Calculation Process

- Eligible CETCs would file their September 30, 2011, line counts with USAC on or before March 31, 2012, or upon approval of this petition
- For IAS, USAC would be directed to process the IAS line counts according to the same disbursement timetable as the remaining categories of support

# Supporting Comments: Montana PSC

- “The PSC believes that MTPCS has presented a reasonable alternative to what the FCC has proposed....”
- “Wireless CETCs in Montana have diligently followed requirements set forth upon them by the PSC to achieve 98% coverage within a 5 year period, including investments and expansion made in 2010 and 2011. To reduce high cost support so drastically from what wireless CETCs in Montana had expected to receive in 2012, as the FCC Order suggests, puts sunk investments at risk, as well cellular service for many Montanans in rural communities.”

Reply Comments of Mont. PSC re MTPCS Petition for Recon.,  
Dkt. 10-90 (Feb. 21, 2012)(emphasis added)

# Supporting Comments: Sen. Olson

- “I urge you to consider that funding for cell phone service is necessary for continuation of service to consumers living or working in rural areas of Montana. This includes customers who subscribed to service in 2011. Annual average frozen funding for cellular services should not be determined based upon 2010 subscriber numbers. Since more recent data are available, I urge you to calculate “frozen” support for cell phone networks based upon the most recent information, as proposed in the petition for reconsideration from MTPCS....”

Letter from Senator Alan Olson, Mont. State Senate, to Chmn. Genachowski, Dkt. 10-90 (Feb. 10, 2012)(emphasis added)

# Supporting Comments: MITS/Sagebrush

- “In its Petition for Reconsideration of the FCC USF Order, Montana PCS, LLC (MTPCS) requested “a limited exception from the CETC support amount baseline calculation methodology for CETCs subject to state mandated network build-out requirements.... Sagebrush concurs and supports MTPCS’ Petition.”
- “Montana is one of the least densely populated states in the nation. The continuing shrinkage of universal service cost recovery funding has a substantial adverse impact on Sagebrush and the rural consumers it serves.... Sagebrush is committed to continue providing the same level of quality services to the rural customers as it has been and it cannot do that without sufficient support.”

FNPRM Reply Comments of Mont. Ind. Tel. Systems, at 19, Dkt. 10-90 (Feb. 17, 2012)(emphasis added)

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September 19, 2012

## VIA HAND DELIVERY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service  
WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135;  
WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45;  
WC Docket No. 03-109; WT Docket No. 10-208

Madam Secretary:

Attached to this letter for filing, MTPCS, LLC d/b/a Cellular One (“MTPCS”) submits a confidential attachment to its *ex parte* letter. In the meeting, the undersigned distributed a spreadsheet showing costs of the 50 most unprofitable cell sites of MTPCS in Montana (“Spreadsheet”). The Spreadsheet is appropriately marked as confidential.

MTPCS respectfully requests confidential treatment of the Spreadsheet under 47 C.F.R. § 0.459 because information contained in the Spreadsheet is competitively sensitive and its disclosure would have a negative competitive impact on MTPCS were it made publicly available. Information in the Spreadsheet is subject to protection under 47 C.F.R. §§ 0.457 and 0.459, as demonstrated below.

### Information for which confidential treatment is sought

MTPCS requests that information in the Spreadsheet be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. Information designated as confidential relates to MTPCS’ specific capital and operating expenditures within specific periods. Other information designated as confidential provides competitive data at specific geographic locations. The enclosed Spreadsheet therefore is marked “**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION.**” The redacted information (“Confidential Information”) of MTPCS is

competitively sensitive information that MTPCS maintains as confidential and is not normally made available to the public. Release of the Confidential Information would have a substantial negative impact on MTPCS since it would provide competitors with commercially sensitive information and potential marketplace advantages.

Commission proceeding in which the information was submitted

The Confidential Information is included in the Spreadsheet filed in the above-referenced proceedings.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The Confidential Information in question is competitively sensitive information which is not normally released to the public as such release would have a substantial negative competitive impact on MTPCS.

Degree to which the information concerns a service that is subject to competition and manner in which disclosure of the information could result in substantial harm

The release of the Confidential Information contained in the Spreadsheet would cause MTPCS competitive harm by allowing its competitors to become aware of sensitive proprietary information regarding the operation of MTPCS's business at a level of detail not currently available to the public. The amount of capital and operating expenses, and specific locations where MTPCS may have a marketplace advantage, are sensitive, proprietary and could result in substantial harm if revealed to competitors.

Measures taken by MTPCS to prevent unauthorized disclosure and availability of the information to the public and extent of any previous disclosures of the information to third parties

MTPCS has treated and continues to treat the Confidential Information in the Spreadsheet as confidential and has protected it from public disclosure to parties outside of the company.

Justification of the period during which MTPCS asserts that the material should not be available for public disclosure

MTPCS cannot determine at this time any date on which this information should not be considered confidential.

Marlene H. Dortch, Secretary  
September 19, 2012  
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Other information MTPCS believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable Commission decisions, the information in question should be withheld from public disclosure.

If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



Brooks E. Harlow

Counsel for MTPCS, LLC

cc (via email, without enclosure):

Ms. Carol Matthey  
Ms. Amy Bender  
Mr. Theodore Burmeister  
Mr. Jonathan Foxman  
Ms. Julia Tanner