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May 19, 2015

BY HAND DELIVERY

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

Re: Summary of Oral Ex Parte Presentation, *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, Policy Statement, FCC 15-15 (rel. Feb. 3, 2015)

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b), this letter summarizes a May 15, 2015 meeting held between representatives of CTIA-The Wireless Association® (“CTIA”), National Cable & Telecommunications Association (“NCTA”), United States Telecom Association (“US Telecom”), COMPTEL, ITTA, and GVNW Consulting, Inc. (“GVNW”) and the undersigned with representatives of the FCC Office of General Counsel and Enforcement Bureau. The purpose of the meeting was to express support for the pending Petition for Reconsideration of CTIA, NCTA, US Telecom, and COMPTEL filed March 6, 2015 in the above-referenced, non-docketed proceeding. A list of attendees is provided in the attached Appendix.

We expressed the view that the Commission should vacate the Policy Statement, which established a forfeiture methodology for five different types of FCC payment-related violations. We explained that, because the Policy Statement is written in terms that bind the agency and cabin its discretion in monetary forfeiture proceedings, the Administrative Procedure Act required notice and comment prior to its issuance. In this regard, we pointed to specific language in the Policy Statement that indicates its binding nature. We further explained that the Policy Statement is expressed in even more binding terms than the FCC’s 1991 Forfeiture Policy Statement, which the United States Court of Appeals for the District of Columbia Circuit reversed for lack of notice and comment. *See Standards for Assessing Forfeitures*, 6 FCC Rcd

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4695 (1991), *recon. denied*, 7 FCC Rcd 5339 (1992), *revised*, 8 FCC Rcd 6215 (1993), *reversed*, *United States Telephone Association v. FCC*, 28 F.3d 1232 (D.C Cir. 1994). We also expressed concern with the fact that the Policy Statement's methodology could lead to forfeitures that are unreasonably high, and with the Policy Statement's approach to defining "continuing violations" under the Communications Act. We also noted that the Petition for Reconsideration has yet to be placed on public notice for comment.

Please contact the undersigned if there are any questions regarding this matter.

Sincerely yours,



David H. Solomon
Counsel to CTIA-The Wireless Association®

cc (by email):
Jon Sallet
Suzanne Tetreault
Richard Mallen
Marcus Maher
Peter Saharko

**APPENDIX: ATTENDEES AT MAY 15, 2015 EX PARTE MEETING. POLICY
STATEMENT, FCC 15-15**

FCC Office of General Counsel

Jon Sallet
Suzanne Tetreault
Marcus Maher
Richard Mallen

FCC Enforcement Bureau

Peter Saharko

Non-FCC Attendees

Tom Power (CTIA)
Scott Bergmann (CTIA)
Krista Witanowski (CTIA)
Loretta Polk (NCTA)
Diane Holland (US Telecom)
Mary Albert (COMPTEL)
Micah Caldwell (ITTA)
David Cohen (GVNW Consulting)
David Solomon (Wilkinson Barker Knauer, LLP)