

1 Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

2 A. My name is Geoff Feiss. My business address is Montana  
3 Telecommunications Association (“MTA”), 208 North Montana Avenue,  
4 Suite 105, Helena, Montana 59601.

5  
6 Q. WHAT IS YOUR POSITION AT MTA?

7 A. I am the General Manager, a position I have held since 1998. I serve as a  
8 spokesman for the independent telecom providers of Montana, and  
9 provide legislative and regulatory advocacy for MTA members on both the  
10 federal and state levels of government.

11

12 Q. DESCRIBE MTA’S MEMBERSHIP.

13 A. MTA represents small and large independent local exchange carriers  
14 doing business in Montana. MTA’s members include both commercial,  
15 shareholder-owned companies, and member-owned telephone  
16 cooperatives. Most of MTA’s members are Montana-owned enterprises;  
17 however some are national in scope.

18

19 Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR BACKGROUND AS  
20 IT IS RELEVANT TO THIS TESTIMONY.

21 A. I have spent thirty years in the public policy environment, with the last  
22 twenty years focusing on telecommunications policy. I started my career  
23 in Washington D.C. on Capitol Hill as legislative aide for Members of  
24 Congress before moving “downtown” to the American Electronics  
25 Association. In 1987, I was hired by Michigan Bell Telephone Company,  
26 in Detroit, MI, to manage their federal relations department. In 1994, I  
27 moved back to Washington, D.C., to work for the United States Telephone  
28 Association (“USTA,” now USTelecom) as Director of Congressional  
29 Relations. It was during my tenure at USTA that Congress passed the  
30 Telecommunications Act of 1996 (“the Act”). I was involved with some of  
31 the negotiations during the drafting and passage of the Act; although most

1 of my attention was focused on a separate piece of legislation which  
2 Congress concurrently was debating: the Communications Assistance for  
3 Law Enforcement Act (“CALEA”).  
4

5 Since the passage of the Telecommunications Act, I have participated  
6 directly in numerous regulatory and legislative proceedings involving the  
7 Act, primarily related to intercarrier compensation and universal service. I  
8 have filed several comments on behalf of MTA before the Federal  
9 Communications Commission (“FCC”) in Docket No. 96-45, and other  
10 Dockets; and participated in many *ex parte* visits with FCC  
11 Commissioners and senior staff. I testified before the U.S. House of  
12 Representatives’ Energy and Commerce Committee on the matter of  
13 universal service—including the designation of competitive eligible  
14 telecommunications carriers (“CETCs”)—in June, 2006, and have been  
15 actively involved in the development of universal service related legislation  
16 in Congress.  
17

18 On the state level, I have led efforts to amend Montana’s universal service  
19 statute, and other sections of Montana’s Telecommunications Act (69-3-  
20 801, ff. Mont. Code Ann.), and have participated in a wide variety of  
21 Montana Public Service Commission (“Commission”) proceedings related  
22 to telecommunications law, regulation and policy.  
23

24 I currently serve on the Government Affairs Committee of the National  
25 Telecommunications Cooperative Association (“NTCA”), a national  
26 association of independent telecommunications carriers. I also have been  
27 appointed to a universal service task force under the auspices of NTCA.  
28

29 Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

30 A. I am testifying on behalf of MTA.  
31

1 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

2 A. I will urge the Commission to reject the application of Chinook Wireless  
3 (“Chinook”) for designation as an eligible telecommunications carrier  
4 (“ETC”) in Montana. Such designation will not provide any tangible benefit  
5 to the consumers of Montana. There is no need to support multiple ETCs  
6 serving the same areas in Montana. Designation of Chinook as a CETC  
7 will merely exacerbate an already-critical threat to the viability of the  
8 federal universal service fund, which is vital for the preservation and  
9 advancement of essential telecommunications services (as opposed to  
10 redundant, complementary services) in Montana. Current universal  
11 service rules provide no incentive for Chinook to build network facilities.  
12 Instead, if granted ETC status, Chinook would be “rewarded” with more  
13 universal service support simply by counting current and/or adding more  
14 handsets. Moreover, contrary to the impression Chinook tries to create in  
15 its testimony and response to data requests, Chinook is simply an asset in  
16 a private equity firm’s investment portfolio. One can easily speculate that  
17 Chinook intends to use universal service support to prop up the value of  
18 the asset for its shareholders’ ultimate financial gain. For these reasons  
19 that I will elaborate on in my testimony, Chinook’s application fails to meet  
20 the public interest standard of federal and state statute and regulation, and  
21 should be denied.

22

23 Q. IS UNIVERSAL SERVICE SUPPORT INTENDED TO SUBSIDIZE  
24 MULTIPLE, COMPLEMENTARY SERVICE PROVIDERS IN THE SAME  
25 AREA?

26 A. No. Federal Communications Commission (“FCC”) Chairman Kevin  
27 Martin often has lamented that universal service “subsidies generated by  
28 the [FCC’s current] rules now support multiple wireless networks providing  
29 services that for many consumers are effectively a complement, not a

1 substitute, to the service already offered by the subsidized wireline  
2 incumbent local exchange carrier.”<sup>1</sup>

3  
4 The goal of the Telecommunications Act of 1996 (“the Act”) is “to promote  
5 competition and reduce regulation in order to secure lower prices and  
6 high-quality services for American telecommunications consumers and  
7 encourage the rapid deployment of new telecommunications  
8 technologies.”<sup>2</sup> However, there is little—if any—evidence that competition  
9 is enhanced by subsidizing complementary services, particularly where  
10 such services already are offered by multiple carriers, often without the  
11 added subsidy of universal service support, as is the case in this docket.  
12 For instance, Chinook asserts that it “believes there are a number of  
13 locations...not reached” by incumbents and current carriers such as  
14 Blackfoot, 3 Rivers, Verizon and Alltel; however, no evidence is provided.<sup>3</sup>

15  
16 In testimony earlier this year before the Senate Natural Resources and  
17 Energy Committee, Commission Chairman Greg Jergeson acknowledged  
18 that wireless service “is still viewed by most people as a complement to,  
19 not a substitute for, their home and business wireline services.”

20  
21 Chinook itself acknowledges that it provides complementary services:  
22 “Many customers appreciate the ability to choose wireless service as a  
23 complement, rather than a competitor, to their wireline service.”<sup>4</sup>

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<sup>1</sup> See letter from FCC Chairman Kevin Martin to House Energy and Commerce Subcommittee on Telecommunications Chairman Markey (not dated, but approximate release date of May 14, 2007). p.6.

<sup>2</sup> Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996), Preamble.

<sup>3</sup> Chinook response to 3RC-003.

<sup>4</sup> *In the Matter of MTPCS, LLC, d/b/a Chinook Wireless, Application for Designation as an Eligible Telecommunications Carrier.* Montana Public Service Commission Docket No. D2007.2.18. Chinook’s Responses to Blackfoot Telephone Cooperative, Inc.’s Data Requests to Chinook Wireless. July 2, 2007. p. 3.

1 Q. IS DESIGNATION OF ADDITIONAL CETCs IN RURAL AREAS  
2 CONSISTENT WITH THE PURPOSE OF UNIVERSAL SERVICE TO  
3 PROVIDE ACCESS TO AFFORDABLE, QUALITY  
4 TELECOMMUNICATIONS SERVICE?

5 A. No. There is no evidence that designation of multiple ETCs enhances  
6 phone service or penetration. Two recent studies by Criterion Economics  
7 ([www.criterioneconomics.com](http://www.criterioneconomics.com)) show that most CETCs were already  
8 successfully providing service to the large majority of their rural customers  
9 prior to designation as CETCs. This would be the case in this instance,  
10 too, given that 3 Rivers, Blackfoot, Verizon Wireless and Alltel—not to  
11 mention Chinook—already provide service to most if not all of the  
12 customer areas for which Chinook now proposes to receive federal  
13 universal service support. The Criterion studies also demonstrate no  
14 statistical correlation between the amount of support provided to wireless  
15 carriers and the proportion of the population or land area that has wireless  
16 coverage. “To the extent subsidies to wireless CETCs are intended to  
17 increase the availability of wireless service in high-cost areas, the vast  
18 majority of funds are simply wasted.”

19  
20 Prior to the release of the Criterion studies, AT&T reached a similar  
21 conclusion, in an *ex parte* communication before the FCC on March 22,  
22 2007. In its *ex parte*, AT&T pointed out that “the overall penetration rate in  
23 the United States increased only 0.6 percent from July 2005 to July 2006,  
24 even though the universal service fund ballooned over the same period.”  
25 AT&T further pointed out that “consumers are in many cases footing the  
26 bill to subsidize three or even four wireless ETC lines in the same  
27 household.... [O]ver 13% of supported wireless CETC lines are in

1 households that have at least three such lines, and over 8% are in  
2 households with *four* such lines.”<sup>5</sup>

3

4 The Montana Consumer Counsel also has informed this Commission of its  
5 similar conclusion. In a recent motion for reconsideration of the  
6 Commission’s designation of another wireless carrier in Montana, the  
7 Consumer Counsel asserted that “[g]ranted ETC status in this case would  
8 burden the USF without a corresponding public benefit...[T]here is no USF  
9 requirement that customers have access to both wireline and wireless  
10 service.”

11

12 The Criterion studies further demonstrated that CETCs have no incentive  
13 to use universal service support for additional investment, since they’re  
14 “rewarded” for each handset they turn up, not for network investment.  
15 Thus, wireless CETCs have an incentive to turn existing handsets into  
16 universal service revenue streams, and to add as many handsets as  
17 possible, thereby increasing their support. This is not the purpose of  
18 universal service.

19

20 The Fifth Circuit Court of Appeals further corroborates the finding that  
21 there is no obligation under the Act to designate multiple ETCs. The  
22 FCC’s “broad discretion to provide sufficient universal service funding  
23 includes the decision to impose cost controls to avoid excessive  
24 expenditures that will detract from universal service.”<sup>6</sup> The Court found  
25 that “so long as there is sufficient and competitively-neutral funding to  
26 enable all customers to receive basic telecommunications service, the

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<sup>5</sup> In the Matter of Federal-State Joint Board on Universal Service, High Cost Universal Service Support, WC Docket No. 05-337; In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45. (“AT&T ex parte”). March 22, 2007. p. 2

<sup>6</sup> Alenco Communications, Inc. v. FCC, 201 F.3d 608, 620-621 (5<sup>th</sup> Cir. 2001).

1 FCC has satisfied the Act and is not further required to ensure sufficient  
2 funding of every local telephone provider as well.<sup>7</sup>

3

4 Q. WHAT HAVE THE FCC AND JOINT BOARD DONE TO STEM THE  
5 EXPLOSIVE GROWTH IN DESIGNATIONS OF CETCS?

6 A. First, the Act itself clearly establishes that states must apply a higher  
7 standard whenever considering the designation of CETCs in rural areas.  
8 A “State commission may, in the case of an area served by a rural  
9 telephone company, and shall, in the case of all other areas, designate  
10 more than one common carrier as an eligible telecommunications carrier  
11 for a service area...Before designating an additional eligible  
12 telecommunications carrier for an area served by a rural telephone  
13 company, the State commission shall find that the designation is in the  
14 public interest.”<sup>8</sup> Congress therefore recognized that designating  
15 additional ETCs in rural areas was questionable and set a specific  
16 distinction for rural areas for state commissions to apply when designating  
17 ETCs in such areas.

18

19 Since enactment of the Act, however, it has become painfully obvious that  
20 such distinctions have been overlooked. Multiple ETCs have been  
21 designated to serve both non-rural and rural areas throughout the country,  
22 including Montana.

23

24 In February of 2005, the Federal-State Joint Board on Universal Service  
25 (“Joint Board”) recommended a rigorous ETC designation process should  
26 be applied to ensure that only fully qualified ETC applications are  
27 designated. In additional comments approving in part and dissenting in  
28 part the Joint Board’s recommendations, FCC Commissioner Jonathon  
29 Adelstein and Joint Board Member Bob Rowe (Chairman of the Montana

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<sup>7</sup> Id.

<sup>8</sup> 47 U.S.C. §214(e)(2).

1 PSC), encouraged states to apply a more stringent public interest test to  
2 applications for additional ETCs.<sup>9</sup>

3  
4 In March of 2005, the FCC issued a Report and Order encouraging states  
5 to apply greater scrutiny to applications for designation of additional ETCs  
6 to protect against excessive growth of the universal service fund.<sup>10</sup> Yet  
7 states continue to designate additional ETCs. As the AT&T *ex parte*  
8 revealed earlier this year, “[t]he number of CETCs has exploded — the  
9 overwhelming majority of study areas have *at least* two CETCs already,  
10 while 156 study areas have *at least four*, and a handful have *sixteen or*  
11 *more*—and CETCs received almost *one billion* dollars of funding in  
12 2006.”<sup>11</sup>

13  
14 The explosion in ETC designations led the Joint Board earlier this year to  
15 recommend establishing an emergency interim cap on the universal  
16 service fund support for CETCs.<sup>12</sup> As the Joint Board stated in a 7-1  
17 decision, representing federal and state regulators and consumer  
18 advocates from rural and urban states alike, “Without immediate action to  
19 restrain growth in competitive ETC funding, the federal universal service  
20 fund is in dire jeopardy of becoming unsustainable.”<sup>13</sup> [Emphasis added.]

21  
22 The demise of the universal service fund would be devastating to  
23 Montana. While providing support to multiple, complementary, redundant  
24 service providers in Montana with universal service money might be nice,  
25 it’s an unnecessary luxury that we can no longer afford since it puts in

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<sup>9</sup> See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 17 FCC Rcd 22642, para. 1 (2002).

<sup>10</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd 6371, released March 17, 2005 (“ETC Order”); also *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04J-1, 19 FCC Rcd 4257 (2004), Released February 27, 2004 (Joint Board Recommended Decision).

<sup>11</sup> *Op cit.* p. 2.

<sup>12</sup> *In the Matter of High-Cost Universal Service Support*. Federal State Joint Board on Universal Service. WC Docket No. 05-337; CC Docket No. 96-45. May 1, 2007.

<sup>13</sup> *Id.* p. 2.

1 jeopardy the very universal service fund support which is absolutely critical  
2 for the provision of essential telecommunications services provided by  
3 Montana's rural local exchange carriers. A threat to the fund is a threat to  
4 the fundamental telecommunications infrastructure of Montana. I should  
5 note that even wireless carriers depend on this underlying infrastructure.  
6 Thus, in a very real manner, wireless CETCs can be seen as having a  
7 parasitic effect on the fund; they threaten to kill the hosts on whose  
8 viability they depend.

9  
10 The Joint Board reported that universal service fund support to CETCs  
11 has grown from \$15 million in 2003 to \$1 billion in 2006, and is projected  
12 to grow to \$2.5 billion in 2009. This year, consumers paid a universal  
13 service assessment of 11.7 percent on their interstate phone bills, the  
14 highest since inception. (Since the Joint Board's Recommended Decision  
15 was released, the assessment has gone "down" to 11.3 percent for the  
16 current Quarter.) This level of contribution assessment threatens the  
17 sustainability of the fund.

18  
19 As noted by FCC Chairman Martin, Criterion Economics, AT&T and  
20 others, the explosive growth of the fund is attributed entirely to the growth  
21 of CETCs, and not incumbent local exchange carriers. Such growth offers  
22 few, if any benefits that aren't already available in the un-supported,  
23 competitive telecommunications marketplace. In fact, current rules simply  
24 confer a windfall to CETCs, since such support is not based on CETCs'  
25 costs, but on incumbents' costs, which support a broader array of  
26 investment and regulatory obligations. Not only does such "identical  
27 support" potentially confer unsubstantiated windfalls on the CETCs, but  
28 the subsidy flowing to wireless CETCs includes \$200 million of support not  
29 intended for CETCs in the first place. As AT&T's *ex parte* submits, \$200  
30 million of support comprises the portion of identical support which includes  
31 the effect of access charge reform on incumbent, but not competitive,

1 ETCs. “[It is] indefensible that wireless ETCs are permitted to share in  
2 those discrete portions of universal service high-cost funding that are  
3 *specifically designed to replace access charges that have been*  
4 *eliminated*. Carriers that have suffered no harm from the commission’s  
5 access charge reform should not reap a universal service windfall from the  
6 relief specifically designed to minimize the impact of such reform.”<sup>14</sup>  
7

8 Q. SHOULD THE COMMISSION CONSIDER THE EFFECTS OF  
9 GRANTING CHINOOK’S APPLICATION ON THE SIZE OF THE  
10 UNIVERSAL SERVICE FUND?

11 A. Yes. Chinook asserts in its Application (p.24) that “the FCC specifically  
12 rejected the idea of assessing the impact of one designation on the USF.”  
13 It cites the 2005 ETC Order, stating that “analyzing the impact of one ETC  
14 on the overall fund may be inconclusive.” That hardly constitutes a  
15 “specific rejection” of the effects of designating additional ETCs on the  
16 size and growth of the universal service fund. The Order that Chinook  
17 cites states that the FCC declines to adopt a *specific test*. It does not  
18 reject consideration of the effect of additional ETC designations on the  
19 Fund. The Order goes on to say a “state may be justified in limiting the  
20 number of ETCs in that study area, because funding multiple ETCs in  
21 such areas could impose strains on the universal service fund.”<sup>15</sup>

22 [Emphasis added.]  
23

24 Since release of the 2005 ETC Order, things have gotten worse. As I  
25 have noted earlier, the size of the universal service fund has ballooned in  
26 a few short years from \$15 million to over \$1 BILLION. Thus, the Joint  
27 Board issued its recommended decision to stem the explosive growth of  
28 the fund, which threatens its sustainability. This growth is entirely

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<sup>14</sup> AT&T ex parte. p. 10. (The Joint Board’s recommendation to cap support at existing levels includes the \$200 million in access charge embodied in the identical support received by wireless carriers.)

<sup>15</sup> ETC Order. para. 55.

1           attributable to the growth in designation of wireless CETCs. In fact,  
2           universal service support to incumbent ETCs has gone down over the  
3           same period that support to CETCs has skyrocketed. Consumers'  
4           contributions to universal service, meanwhile, have climbed to over 11  
5           percent.

6  
7           Clearly, it's time to take a long, hard look at continuing to designate  
8           multiple, redundant, unnecessary ETCs. And Chinook's application  
9           provides no reason why the Commission should grant—and every reason  
10          why the Commission should deny—designation of yet another CETC in  
11          Montana.

12

13    Q.    IS CHINOOK'S OWNERSHIP STRUCTURE RELEVANT IN THIS  
14          PROCEEDING?

15    A.    Yes. MTPCS, LLC, d/b/a Chinook Wireless, is an asset in the investment  
16          portfolio of Alta Communications ("Alta"). According to Alta's web site  
17          ([www.altacomm.com](http://www.altacomm.com)) "Alta Communications is a Boston-based private  
18          equity firm [formed] to focus exclusively on the media and  
19          telecommunications industries. Over the last 20 years, this team has  
20          been extremely active—with investments in over 100 communications  
21          companies—and has developed a successful track record...Currently, we  
22          have approximately \$1.5 billion of capital under management spread  
23          across five limited partnerships." Alta has "been one of the most active  
24          investment teams in the communications industry." Alta's Wireless  
25          Telecom Portfolio includes Chinook Wireless, "a PCS provider created by  
26          Alta and Jon Foxman. Jon Foxman is a repeat entrepreneur who we have  
27          worked with in the successful investments of Sol Communications and  
28          Highland Cellular."

29

30          Any discussion of potential benefits of venture capital and private equity in  
31          America's economy aside, it is not the responsibility of the Montana Public

1 Service Commission to authorize the use of federal universal service  
2 support to augment the value of a Boston-based private equity firm's  
3 investment portfolio. Nowhere does the Act state that the purpose of  
4 universal service is to enhance shareholder value.  
5

6 Q. PLEASE SUMMARIZE YOUR TESTIMONY

7 A. The Commission should deny Chinook's application for designation as an  
8 ETC. Designation of Chinook fails to serve any public benefit, and in fact  
9 does the opposite: designation would further threaten the sustainability of  
10 the universal service fund which is critical to continued investment in  
11 Montana's essential telecommunications infrastructure. Montanans are  
12 already served by a variety of ETCs and other telecom providers serving  
13 practically the same areas in which Chinook seeks universal service  
14 support. Chinook's application merely proposes to provide redundant,  
15 complementary service. Moreover, it is reasonable to assume that  
16 Chinook's application at least in part is motivated by an interest to  
17 maximize the shareholder value of its private equity partners. In short,  
18 there is no compelling need to designate yet another CETC in Montana,  
19 particularly this one.  
20

21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22 A. Yes.