

Service Date: August 24, 2007

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF MTPCS, LLC,)	UTILITY DIVISION
dba CHINOOK WIRELESS, Application)	
for Designation as an Eligible)	DOCKET NO. D2007.2.18
Telecommunications Carrier)	

**MONTANA TELECOMMUNICATIONS ASSOCIATION
MOTION TO VACATE
INFORMATIONAL MEETING**

COMES NOW the Montana Telecommunications Association (“MTA”) and moves the Montana Public Service Commission (“Commission”) for an Order vacating the informational meeting noticed for September 13, 2007 in this docket. The MTA submits the following memorandum in support of its request.

MEMORANDUM IN SUPPORT OF MOTION TO VACATE

On August 16, 2007 the MTA received a Notice of Informational Meeting in this docket, which had a service date of August 15, 2007. The Notice contained the following:

Chinook presently has pending before the PSC a docketed case, which is an application to be designated an eligible telecommunications carrier (above titled matter). No matters involved in a docketed case may be discussed at an informational meeting. The informational meeting is open to the public. Parties to the Chinook matter before the PSC are welcome to attend.

The Commission policy regarding informational meetings is contained in the Operations Manual (Blue Book), Section 2, page 4, paragraph J, and reads:

“Informational Meetings. The Commission encourages regulated companies, intervenors, customers and the general public to request meetings for the sharing of information. Upon review of such a request, which shall include a proposed agenda, if the Commission agrees that such a meeting is topical and timely it will be scheduled and duly noticed. No matters involved in a docketed case may be discussed in an informational meeting. No formal action in response to an informational meeting may be taken for 24 hours following the close of the meeting.”

Commission staff provided an email from Chinook’s counsel to Commission staff that is attached hereto as Exhibit 1 and by this reference herein incorporated.

That email, dated August 7, 2007, reads:

Kate and Connie:

I didn't see Connie's e-mail address (I may have missed it) in your last message, Kate, so I took a stab that there weren't any other "cjones" listings in state government. If I need to reroute the agenda, please just let me know.

This is the proposed agenda for the informational meeting we would like to do. Again, our purpose is simply to familiarize the Commission with our company. We think we have a good, positive story to tell and would like to share that story with state government's most powerful policymakers in the area of telecommunications.

We will scrupulously avoid discussing any open docket in which we are a party or any other open docket for that matter. We want to talk about our people, our service, our technology and our customers ... period.

We will likely bring in a tray of baked goods to emphasize that this is a relaxed, informal event and will try not to take too much of the Commission's time. I would guess that my PowerPoint presentation will take something on the order of 20 minutes. That would leave anywhere from 10 to 40 minutes for questions and answers, depending on whether the Commission would like to reserve a half hour or an hour for the session.

I hope three Commissioners will be sufficiently interested in hearing what we have to say. There are now more wireless "lines" in the U.S. than there are landline lines. Most near term growth in the telecom industry appears as though it will be on the wireless side, and we very much want to be a key part of that transition for Montana.

Assuming for the moment that the interest is there, we would be pleased if two times could be found in September so we could select the more convenient of the

two for us. However, if only one time is available, we will make our schedules work around that time.

Thank you so much for your assistance. I look forward to hearing from you!

Michael Strand
Counsel for Chinook

A request for the proposed agenda for the meeting was made to Chinook, and the agenda attached hereto as Exhibit 2, and by this reference herein incorporated, was provided by Chinook. Chinook represented that the agenda was the same as that submitted to the Commission. The Commission did not include an agenda with the Notice of Informational Meeting.

The MTA requests that the informational meeting be vacated. The agenda submitted by Chinook includes almost in its entirety issues that are contested in this docket. Discovery is ongoing. Intervenor testimony has just recently been submitted, and discovery on that testimony is outstanding. This informational meeting falls in the midst of the ongoing contested case proceeding, in which Chinook's rebuttal testimony is due on September 25, 2007, two weeks after the informational meeting. The hearing date is currently set for October 31, 2007.

Moreover, although the PSC Operations Manual states that "**No matters involved in a docketed case may be discussed in an informational meeting**" the fact is that the Commission's Notice of Chinook's informational meeting was captioned within Docket No. D2007.2.18. That Notice alone connects and involves the informational meeting to the contested case docket. The informational meeting will become part of the record in D2007.2.18.

Chinook's application to be designated an ETC, filed on February 27, 2007, includes, among other things: its background information as a company; direct testimony from its directors and officers (Jonathan Foxman, President and CEO of Chinook; Ernie Peterson, Vice President of Business Development for Chinook; and Patrick M. Monroe, Vice President, Engineering and Operations, Chinook); engineering reports of Chinook's proposed build-out plans; coverage maps; and rate plans.

The informational meeting proposed agenda from Chinook indicates that it wishes to discuss "Chinook's Story; Chinook's People; Chinook's Technology; and Chinook's Vision." Exhibit 2. All of these subjects are addressed in Chinook's application. These subjects are also being explored as part of the discovery that is ongoing in this docket. See, generally, Blackfoot Telephone Cooperative Data Requests to Chinook 1 through 4, and MCC Data Requests to Chinook 001 through 041. Chinook's agenda is, by itself, a violation of the Commission's prohibition of discussion of contested case matters in an informational meeting.

With respect to the due process issues involved in such a meeting, it is unclear how the Commission will ensure that matters involved in the contested case proceeding are not discussed at the informational meeting. In fact, it is nearly impossible to imagine how any matter in this docketed proceeding is not involved in the contested case proceeding. What remedy will be available to other parties in the docket if Chinook does in fact address matters involved in the contested case proceeding? Who will decide whether the line has been crossed

(if it hasn't already been crossed by the mere fact that the Information Meeting is noticed as part of D2007.2.18), and how will that decision be made? Will the parties be given an opportunity to object to the discussion being held? Will parties be provided an opportunity to respond, or present rebuttal information?

If the Commission does not vacate the meeting, then due process protections must be put in place to ensure that other parties to this docket are provided a full and fair opportunity to be heard, and to submit objections and rebuttal information to the Commission. At a minimum, the Commission must record the meeting and enter the transcript into the record in this docket.

It is unclear why this informational meeting at this point in time is so pressing that the Commission should hold such a highly unusual and very improper meeting. The hearing in this docket is set for the end of October. After briefing, it is possible the Commission will issue a final decision on Chinook's ETC application around the first of the year. Surely Chinook's story, people, technology and vision will not change so dramatically in the next six months that prudence should not be the better course here. The Commission should vacate the informational meeting and reschedule it at a date after the final decision in this docket is issued.

CONCLUSION

MTA respectfully requests that the Commission vacate the informational meeting currently scheduled for September 13, 2007.

Respectfully submitted this 24th day of August, 2007.

JARDINE, MORRIS & TRANEL, PLLC

By _____

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CERTIFICATE OF SERVICE