



# STATE OF MINNESOTA

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OFFICE OF THE ATTORNEY GENERAL

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March 18, 1999

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RECEIVED  
MAR 22 1999

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room 222  
1919 M. Street NW  
Washington, D.C. 20554

**Re: CC Docket No. 98-1  
Ex Parte Meeting**

Dear Ms. Salas:

On March 16, 1999, Dennis Ahlers, Minnesota Attorney General's Office, Adeel Lari, Minnesota Department of Transportation and Fazil Bhumani, Minnesota Department of Administration, participated in a telephone conference with Claudia Pabo and David Kirschner, attorneys in the Common Carrier Bureau. The purpose of the call was to discuss the petition of the State of Minnesota for a declaratory ruling regarding the effect of Section 253 of the Communications Act on an agreement to install fiber optic wholesale transport capacity on the freeway right-of-way in Minnesota, and to answer questions that counsel raised about the petition.

The discussion concerned the filed position of the State of Minnesota that the agreement does not violate Section 253 and promotes rather than discourages competition. The discussion reviewed the State's position that no substantial cost advantage incurs to the benefit of the developer given its required significant investment in a statewide network beyond the freeways and requirements to pay \$5 million in ITS development costs and devote 20 percent of capacity to the State at no charge. Furthermore, a discussion was had of the ability of service providers to collocate on the right-of-way while the trenches were open or to install conduit at that time.

Discussion also touched on the following:

1. The continuing safety concerns of the State.
2. Lack of interest expressed in existing empty conduits available from Maple Grove to St. Cloud.
3. Recent AASHTO resolution that endorses Minnesota's approach and recognizes the safety concerns as legitimate.

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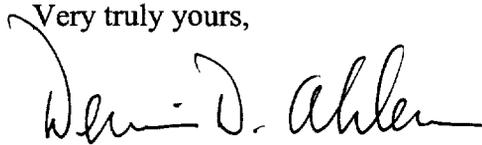
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4. Pro-competitive aspects of the project both to current and future entrants.
  - Allows for colocation. Colocators do not have to sign up for all of the routes just segments.
  - Reduces financial entry barrier. Small competitors do not have to spend a lot and can deploy their own fiber when trench is open.
  - Promotes facilities based as well as resale competition (or a combination) for current and future entrants. Future entrants can obtain (purchase and own or lease) fiber. They can select, own, and control their own equipment and develop their own service offerings.
  - Currently, there is no competition for dark fiber (it is not available). This project not only makes it available but does it at small increments (2 fiber and above) further reducing entry barriers.
  - Developer offered to discuss with MTA about deploying empty conduct. No response from MTA.
  
5. Incumbent local exchange carriers (MEANS/MTA/others):
  - Would for obvious reasons prefer no competition.
  - Do not provide dark fiber for sale or lease.
  - After having lost in an open and competitive bidding process, now using the regulatory process to stop the project.

If there are any questions regarding this matter, please contact me at the number listed above.

Very truly yours,



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Assistant Attorney General  
Transportation Division  
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cc: David Kirschner  
Claudia Pabo  
All Parties