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May 13, 2002

Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Communication in CC Dockets 96-45 and 96-98

Dear Ms. Dortch:

This memorializes three *ex parte* meetings concerning material that may be relevant to pending proceedings in the above-referenced dockets. On Wednesday, May 8, I met with Commissioner Abernathy, and on Thursday, May 9, Leonard Steinberg of Alaska Communications Systems Group, Inc. (“ACS”), Jeffrey Marks of this office, and I met with Commissioner Martin, Dan Gonzalez, and the following Wireline Competition Bureau personnel: Dorothy Attwood, Jeffrey Carlisle, Carol Matthey, Christopher Libertelli, Katherine Schroder, and Eric Einhorn. The subject of these meetings was the attached material concerning ACS of Fairbanks, Inc. and ACS’s views that:

- The purpose of the rural carrier high-cost loop fund is to provide support in areas where loop costs exceed the national average, and providing support to carriers who do not have loop costs in excess of this standard violates the requirement under Section 254(e) of the Communications Act (the “Act”) that support be used “for the provision, maintenance, and upgrading of facilities and services for which the support was intended;”
- The Commission should order the Universal Service Administrative Corporation (“USAC”) to halt payment of high-cost loop support to carriers who are known, based on publicly available information about the price they pay for unbundled network elements (“UNEs”), to have loop costs below the national average;
- The FCC may preempt state action where the state has set UNE prices not in accordance with the FCC’s rules and policies, including total element long-run incremental cost (“TELRIC”) principles, but based on some other standard not approved by the Commission for setting UNE prices, such as

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the high-cost proxy model for non-rural carriers developed in the universal service proceeding,¹ resulting in UNE rates that are so unjust as to be confiscatory; and

- Under Section 252(e)(5) of the Act, the FCC may preempt a state for failure to act within a reasonable period of time to establish UNE prices in accordance with the Commission's TELRIC principles.

Please direct any questions concerning this matter to me.

Very truly yours,

Karen Brinkmann

cc: Commissioner Kathleen Q. Abernathy
Commissioner Kevin J. Martin
Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin
Dorothy Attwood, Chief, Wireline Competition Bureau
Jeffrey Carlisle, Senior Deputy Chief, Wireline Competition Bureau
Carol Matthey, Deputy Chief, Wireline Competition Bureau
Chris Libertelli, Special Counsel for Competition Policy, Wireline Competition Bureau
Katherine Schroder, Chief, Telecommunications Access Policy Division, WCB
Eric Einhorn, Deputy Chief, Telecommunications Access Policy Division, WCB

¹ We note that the decision released today by the U.S. Supreme Court confirms the conclusion that the universal service model is not appropriate for determining UNE prices. *Verizon Communications, Inc. v. FCC*, ___ U.S. ___ (No. 00-511, decided May 13, 2002), *slip op.* at 55.