ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

January 21, 2004

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation in CC Docket Nos. 96-262, 01-338, 96-98, 98-147

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this letter is to provide notice in the above-captioned docketed proceedings of an *ex parte* meeting on January 20, 2004, by John Windhausen and Jonathan Askin of the Association for Local Telecommunications Services (ALTS). ALTS met with Dan Gonzalez, Legal Advisor to Chairman Powell. ALTS primarily discussed concerns over possible FCC action to further reduce the ability of facilities-based CLECs to obtain revenue for originating and terminating long distance traffic.[1] ALTS also addressed BellSouth's attempt to rewrite the loop access conclusions set forth in the *Triennial Review Order*.

ALTS considered the consequences, affecting the broad base of CLECs, ILECs (particularly rural ILECs), CMRS companies and their customers, that would result from possible revisions to the rules governing CLEC access charges currently under consideration in CC Docket 96-262. ALTS noted that new rules would undoubtedly increase uncertainty over a CLEC's ability to obtain reasonable compensation for originating and terminating long distance traffic. ALTS questioned the need for the FCC to revisit the CLEC access charge issue at this time. ALTS noted that the issue was resolved to the extreme financial detriment of the facilities-based CLECs two years ago and resulted in immediate and continuing dramatic reduction to CLEC access rates.

ALTS stressed that there is no reason to single out facilities-based CLECs as the only parties that should be further burdened by immediate changes to the intercarrier compensation regime. ALTS suggested that any additional changes are better achieved by the FCC adoption of a unified intercarrier compensation regime that fairly considers the needs of all industry players. To single out facilities-based CLECs, who have made the effort to deploy their own switching facilities, would serve only to further destabilize the most vulnerable players in the industry. Any revisions to the CLEC access conclusions set forth two years ago would open the door to endless contests, allegations and second guessing over how much revenue a CLEC should be entitled to for originating and terminating long distance traffic. The dramatic rate reductions in CLEC access charges, which are set to reach the lowest ILEC rates within a few months, would do nothing but add unnecessary confusion and the inevitable withholding of payments to CLECs for the services they provide to long distance carriers.

[1] ALTS' views on the pending CLEC access charge issues are further considered in the attached one-pager, which was distributed to Mr. Gonzalez.

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With regard to the specific service performed by CLECs for CMRS companies, ALTS noted that CLECs, like other LECs, have been performing aggregation services for CMRS companies, as well as other large customers for years. In particular, CLECs have been routing CMRS 8YY traffic since well before the FCC issues its *CLEC Access Charge Order* and the *Sprint PCS Order*. ALTS noted that ILECs, particularly rural ILECs, perform similar aggregation services for wireless companies, and have done so for many years.

ALTS also stressed that it would be unfair and unlawful to apply a new rule, with further CLEC access charge reductions, retroactively. To the extent a CLEC tariffed a switched access rate at the benchmark level and an IXC obtained switched access service from that CLEC, the Commission must continue to hold that that rate was a just, reasonable, and lawful rate, or else risk allowing every IXC to second guess every CLEC access charge and unlawfully withhold payment.

ALTS also addressed their grave concerns and the dramatic, anticompetitive consequences that would result if the FCC were to grant further protection to the ILECs, by further curtailing competitor access to the paradigmatic, bottleneck facility – the local loop. ALTS focused primarily on BellSouth's request to alter the substantive fiber loop conclusions reached in the *Triennial Review Order*, including rewriting of the fiber-to-the-home rule to relieve the ILECs of their current obligations to unbundle fiber-to-the-curb loops and fiber used to serve multiple dwelling units. ALTS' positions are considered below, but these issues are more fully addressed in ALTS' comments in opposition to BellSouth's Recon Petition in CC Docket 01-338.

ALTS noted that BellSouth is asking for a radical departure from the Commission's conclusions set forth in the *Triennial Review Order*. Adopting BellSouth's Petition for Reconsideration would add layers of confusion to loop unbundling and access rules, could derail the nascent facilities-based competitive telecommunications industry, would open the door to ILEC *de facto* dismantling of the loop unbundling rules, and would allow the ILECs to wield monopoly control over captive consumers, denying consumers the benefits of telecom competition.

While ALTS disagrees with the Commission's fiber-to-the-home conclusions and rule, ALTS contended that the Commission must not rewrite the current fiber-to-the-home rule and must not further curtail competitor access to loops. While BellSouth treats its proposal as little more than a minor clarification and extension of the existing rules just adopted in the *Triennial Review Order*, BellSouth, in fact, is proposing a brand new rule. BellSouth is attempting through its petition to move, then blur, then erase the bright-line established by the Commission to determine what must be unbundled and what need not be unbundled. Without a bright-line FTTH rule, there is no way for anyone but BellSouth to determine which loops are FTTC loops free of unbundling obligations and which are merely hybrid or copper loops subject to unbundling obligations.

ALTS also stressed that FTTC is not and must not be considered to offer service equivalence to FTTH. Adding an addition point of failure in the loop, be it at a remote terminal or a pedestal will per force reduce throughput, increase latency, hamper reliability, and increase maintenance problems, particularly where the final distribution plant consists of a medium other than fiber.

ALTS also noted that the ILECs have already begun violating the *Triennial Review Order*, most notably in their failure to abide by their obligation to perform routine functions to

provision DS-1 UNE loops. The Commission ruled, in no uncertain terms, that ILECs may no longer rely on the argument that they have "no facilities" and therefore are not obligated to provision UNE loops when, when all that is required are routine functions that the ILEC would otherwise perform to provision a special access circuit or serve a retail customer. Verizon, in particular, has determined that it has the authority to tack on an additional $500 to $2000 fee to attach the electronics needed to provision a DS-1 UNE loop, thereby sabotaging the CLEC's ability to compete for a customer using the ILEC-controlled bottleneck.

If you have any questions about this matter, please contact me at 202-969-2587.

Respectfully submitted,

/s/

Jonathan Askin

FROM THE DESK OF:
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CLEC ACCESS CHARGE RECON ORDER

- CLECs, like other LECs, have been performing aggregator services for CMRS companies, as well as other large customers for years.
- In particular, CLECs have been routing CMRS 8YY traffic since well before the FCC issues its *CLEC Access Charge Order* and the *Sprint PCS Order*.
- CLECs reasonably relied on the *CLEC Access Charge Order* and the *Sprint PCS Order* in believing they would be entitled to continue to be compensated at the CLEC benchmark rate for routing CMRS 8YY traffic.
- CLECs have already felt dramatic rate reductions, worse than any rate reductions felt by any other segment of the Industry. The *CLEC Access Charge Order* reduced maximum access charge rates from upwards of 6 cents/minute to .55 cents come June.
- IXCs routinely pay ILECs for CMRS-originated traffic. In the case of rural ILECs, these rates are several times higher than CLEC rates.
- No reason to single out CLEC Access Charge issues from broader intercarrier compensation reform process.
- If FCC compelled to single out CLECs for further reduction, any reductions must be prospective only, and must be clearly articulated to avoid intercarrier confusion and litigation.
- Retroactive application would allow IXCs to second guess every prior payment to CLEC, with dangerous ripple into wireless industry and wireless customers, as well potential similar consequences on ILECs serving as wireless aggregators.

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