

# WILLKIE FARR & GALLAGHER<sub>LLP</sub>

1875 K Street, NW  
Washington, DC 20006

Tel: 202 303 1000  
Fax: 202 303 2000

August 3, 2004

***EX PARTE***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Room TW-A325  
445 12th Street, SW  
Washington, DC 20554

Re: CC Docket Nos. 96-98 and 01-338

Dear Ms. Dortch:

On August 2, 2004, Jason Oxman of ALTS, Chris McKee of XO Communications and I discussed the availability of unbundled loops and transport in light of *United States Telecom. Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) with Chris Libertelli, Senior Legal Advisor to Chairman Michael Powell and Matt Brill, Senior Legal Advisor to Commissioner Kathleen Abernathy. During our conversation, I argued that there are strong policy reasons for giving only limited consideration to the availability of special access in the context of the impairment analysis for loops and transport. I also suggested that the Commission (1) should retain the route-by-route approach to determining transport impairment, and (2) could rely on an appropriate proxy for traffic volumes between wire centers as the basis for making impairment findings on at least some transport routes. Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), one electronic copy of this notice is being filed in the above-referenced proceedings.

Sincerely,

/s/

Thomas Jones

cc: Chris Libertelli  
Matt Brill