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October 6, 2004

EX PARTE – Via Electronic Filing
Marlene H. Dortch
Secretary
Federal Communications Commission
45 12th Street, SW
Washington, DC 20554

Re: *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *Core Communications, Inc. Petition for Forbearance,* WC Docket No. 03-171

Dear Ms. Dortch:

On October 5, 2004, Glenn S. Rabin, on behalf of the ALLTEL Corporation, and the undersigned, representing the United States Telecom Association, met with Matthew Brill, Senior Legal Advisor to Commissioner Abernathy and, separately, with Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin. On October 6, 2004, Mr. Rabin and I met with Jessica Rosenworcel, Competition and Universal Service Legal Advisor to Commissioner Copps and, separately, with Scott Bergmann, Legal Advisor for Wireline Issues for Commissioner Adelstein. In those meetings, to discuss the above-captioned proceedings, Mr. Rabin and I made the following points.

It is widely recognized that numerous CLECs benefited from relationships with Internet Service Providers (ISPs) to practice regulatory arbitrage by receiving ISP-bound calls from other LECs. The Commission found that this technique resulted in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which was for ISP-bound traffic.

Quite appropriately, the Commission took action to limit the amount of this regulatory arbitrage by initiating rate and growth caps and new market restrictions in its 2001 Order. It would be totally counter-productive for the Commission to now raise or eliminate these prudently imposed caps and restrictions. To do so now would once again encourage non-economic entry or expansion of CLECs using business plans based on regulatory arbitrage. The reasoning underlying the Commission's action in 2001 is equally applicable today. Therefore, in making its decisions in the above-captioned proceedings, the Commission should do nothing to reverse the course that it set in 2001 to limit the ability of CLECs to employ regulatory arbitrage with respect to ISP-bound

traffic. Nothing in the Court of Appeals Order would compel a contrary result. In fact, the Court took specific notice of the arbitrage problem in remanding rather than vacating the Commission's Order.

In accordance with the Commission's rules, I am filing this letter electronically in the dockets identified above.

Sincerely,

James W. Olson
Vice President Law & General Counsel

cc: S. Bergmann
M. Brill
D. Gonzalez
J. Rosenworcel
G. Rabin