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November 23, 2004

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

*Ex Parte*

CC Docket Nos. 01-338

WC Docket No. 04-313

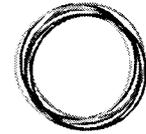
Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on November 22, 2004, the undersigned, Andrew D. Lipman of this firm, and Paul Hobby, CEO, Alpheus Communications, LC met with (1) Jeffrey Carlisle and Pamela Arluk, Wireline Competition Bureau, and (2) Austin Schlick, John Stanley, and Christopher Killion, Office of General Counsel. We presented the views set forth in the attached document which was provided at the meetings.

Sincerely,



Patrick J. Donovan



ALPHEUS

**The most compelling UNE: Legacy Dark Fiber Transport**, innovation, competition, new capacity.

- Impairment relates not to Special Access Tariff, but to **physical presence of third party fiber or cost to self-deploy.**

**DF Transition Plan Linked to ILEC Cooperation**

- Cost to deploy and terminate fiber highly dependant on ILEC receptivity.
- Milestone driven approach: conversion to commercial IRU or roped and rodded duct made available.

November 22, 2004

### **EEL Criteria Applied to Loops Defeats Wholesale Competition & Data Services**

- Would eliminate wholesale service delivery and data-only offerings from competitive ecosystem.
- Federal Courts have already said that Act defines telecommunications service, no basis for restriction.
- At a minimum, need a carve out for facilities-based wholesalers. Alpheus' customer's have switches, not Alpheus. If attestation of use required, network hegemony returns to ILEC.

### **Grandfather Legacy Dark Fiber Loops for 48 months**

- Prevents interruption in customer service.
- Sets in place an orderly transition while replacement of unimpaired transport routes are underway.
- Building Access issues are key factor for loop impairment...Grandfather status would allow Building Access Docket to resolve these issues.