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July 29, 2008

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: *High-Cost Universal Service Support, WC Docket No. 05-337;*
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, we hereby provide notice that, on July 25, 2008, Leonard Steinberg and David Eisenberg of Alaska Communications Systems ("ACS") had a telephonic meeting with Amy Bender, Legal Advisor to Chairman Martin, in connection with the above-captioned proceedings. The subject matter of the meeting was the unintended consequences of the Commission's *Interim Cap Order*.¹

ACS concurs with concerns expressed by Smith Bagley, Inc.,² the Navajo Nation,³ and Alltel Communications, LLC,⁴ regarding interpretations of the Commission's May 1, 2008 *Interim Cap Order*, specifically, the exemption for carriers serving tribal and Alaska Native Region lands.⁵

¹ See *High Cost Universal Service Support*, WC Docket No. 05-337, *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Order*, FCC 08-122 (rel. May 1, 2008) ("*Interim Cap Order*").

² See e.g. Letter from David A. LaFuria, Counsel for Smith Bagley, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337 (filed July 21, 2008). ("*SBI July 21, 2008 Letter*")

³ See Letter from Ben Shelley, Vice-President, Navajo Nation, to Honorable Kevin Martin, Chairman, FCC, dated July 11, 2008, attached to SBI July 21, 2008 Letter.

⁴ See Letter from David Sieradski, Counsel for Alltel, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket No. 96-45 (filed June 6, 2008).

⁵ *Interim Cap Order* at par. 32.

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ACS agrees that the only purpose of adopting the exemption would be to permit CETCs serving Alaska Native Region/tribal lands to receive more support than they would under a cap, not less. Specific language in the *Interim Cap Order* and separate statements of the Commissioners support this intent.⁶

Interpreting the *Interim Cap Order* to limit uncapped support to one line per residential household, as some have argued, would violate this intent, violate Congressional directives that the FCC is not permitted to restrict universal service support to a primary line, and cause harmful consequences that are not in the public interest.

In particular, ACS is concerned that the *Interim Cap Order* might be interpreted in a way that actually reduces support for providers electing to take advantage of the exception for Alaska Native Regions and tribal lands. Limiting uncapped support to one line per residential household (without any support paid to other lines) would cause substantial decreases in support to CETCs serving Alaska Native Region lands. ACS estimates that if all Alaska Native Region CETCs elect to utilize the *Interim Cap Order's* Alaska Native Region exception, and support is limited to only one line per residential household, CETC support for the Alaska Native Regions would be approximately twenty percent (20%) less than the support received if all Alaska Native Region CETCs simply receive the capped amount. We do not believe this result is consistent with the Commission's intent.

CETCs would have significantly less support for deploying and operating their networks which are largely still in build-out stages, particularly in the most remote areas. The result would most harm customers in those hard-to-reach areas that are the least economic to serve. Significantly, it would deprive the most rural households of the safety and convenience afforded to urban households, particularly with regard to wireless family plans. Applying the *Interim Cap Order* in this manner would undermine providers' outreach efforts and their ability to construct new cell sites throughout their service areas.

There are several options for ensuring adequate funding for providers serving tribal/Alaska Native Region lands, consistent with the *Interim Cap Order's* intent. As one option, the FCC could treat each telephone number as an "account," consistent with a numbers-based universal service system. In that way, the FCC would ensure that networks could continue to develop in these areas, which, as Commissioner McDowell noted, are some of the most underserved in the Nation.

⁶ See e.g. Statement of Commissioner Robert McDowell, *Interim Cap Order*, p. 117:

Additionally, I support an exception for all of the providers serving tribal lands across the country, and Alaska Native lands – some of the most under-served parts of America. This limited exception will ensure that companies operating in these remote areas will continue to receive high cost support to provide their services while we move toward a permanent solution.

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If you have any questions or require any further information, please contact undersigned counsel directly.

Sincerely,

Birch, Horton, Bittner and Cherot


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