



WILTSHIRE  
& GRANNIS LLP

January 13, 2012

Shannon M. Heim, Esq.  
Dorsey & Whitney, LLP  
50 South 60<sup>th</sup> Street, Suite 1500  
Minneapolis, MN 55402-1498

Re: Interconnection Request

Dear Ms. Heim:

Thank you for your letter of December 16, 2011 to our client United Utilities, Inc. (UUI). This firm represents UUI in connection with this matter.

UUI appreciates its obligations under the Broadband Initiatives Program Loan/Grant and Security Agreement (the "Agreement") governing the facility at issue. It is committed to both a rate structure that fully complies with those obligations and to interconnection on such terms to be negotiated. UUI therefore remains willing to negotiate interconnection with your clients Nushagak and Bristol Bay Telephone Cooperative, Bush-Tell, Inc., and TelAlaska, or with anyone else seeking interconnection with the TERRA Southwest network. In so doing, however, UUI is bound by the terms of the Agreement to charge rates that allow it to, among other things, repay the loans from the Rural Utilities Service used to help construct the facilities. Moreover, your clients are not the only parties that seek capacity from UUI over its TERRA Southwest network. UUI offers capacity to all prospective purchasers, including its affiliates, on similar rates, terms and conditions, taking into account factors such as volume and term commitments.

You claim that the rates quoted are not reasonable and suggest the possibility of a complaint to the Regulatory Commission of Alaska (RCA) "regarding access and pricing," but the Federal Communications Commission (FCC) rather than the RCA regulates the provision of the broadband and interstate services at issue. What you have written suggests that more than a de minimis amount of the capacity that your clients seek to purchase will be for Internet access, rendering these services interstate irrespective of whether they are telecommunications or information services. Thus, these services do not fall within the RCA's jurisdiction.

Moreover, the services your clients seek are either interstate information or telecommunications services. Even if a "just and reasonable" rate requirement applies, the FCC has recognized that "market forces will generally ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory." *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd. 20730, 20743 ¶ 21 (1996). See also *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed

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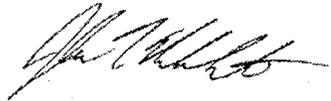
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Rulemaking, 18 FCC Rcd 16978 ¶¶ 663-664 (2003). Courts have also made clear that the “just and reasonable” standard at issue is market-based rather than cost-based. *Qwest Corp. v. Arizona Corp. Comm’n*, 567 F.3d 1109, 1115 (9th Cir. 2009) (distinguishing the “just and reasonable” standard from a cost-based approach) and *EarthLink, Inc. v. F.C.C.*, 462 F.3d 1, 13 (D.C. Cir. 2006) (contrasting “the more relaxed “just and reasonable” standard of 47 U.S.C. §§ 201 and 202” with a “cost-based” one of Section 251). The rates UUI offers are market-based, and thus just, reasonable and nondiscriminatory under governing law.

UUI remains willing to negotiate within this framework – a market-based, nondiscriminatory rate structure that protects RUS’s investment. Your clients, like all potential customers, have the opportunity to take advantage of nondiscriminatory volume and term options that can have an advantageous effect on pricing. And, UUI remains open to negotiating other terms to suit your clients’ particular needs, such as physical interconnection and terms of connection to the public internet.

We invite your clients to respond positively to UUI’s offer.

Sincerely,



John T. Nakahata  
Patrick O’Donnell  
*Counsel for United Utilities, Inc.*