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July 24, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

ORIGINAL

Re: Ex Parte Presentation
CC Dkt. Nos. 98-11, 98-26, 98-32, 98-91, 98-78, RM 9244

Dear Ms. Salas:

In accordance with the Commission's *ex parte* rules, this letter is to notify you that the Commercial Internet eXchange Association ("CIX") met yesterday with Thomas Power of Chairman Kennard's office to discuss the above-captioned proceedings with regard to the implementation of Section 706 of the 1996 Act. Attending the meeting for CIX were Glee Harrah Cady of NETCOM On-Line, Nathaniel Clarke of IBM, and Ronald Plesser and Mark O'Connor of Piper & Marbury, LLP.

During the meeting, CIX urged the Commission to consider several issues affecting the ISP industry as it makes decisions on Section 706 implementation. CIX is concern that incumbent local exchange carriers ("ILECs") have failed to explain how independent ISPs would be offered equal access to customers (or resale), and how customers can obtain the ISP of their choice, as the ILECs deploy advanced telecommunications services, including xDSL services. CIX offered that discrimination can occur against independent ISPs with the marketing and ordering of DSL service, and with ISP access to the ILEC data transport network. This is critically important because, while the ILECs maintain their "bottleneck" on local telecommunications, the vibrant ISP industry has made Internet access a reality for the

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vast majority of American consumers. CIX believes that ILECs can and should promote advanced service offerings that encourage a competitive ISP industry. CIX also expressed its concern that data transport services offered to ISPs should be provided on a competitive basis. The discussion generally focussed on the issues raised in the attached talking points, a copy of which was distributed at the meeting (as well as a copy of the CIX membership list, attached hereto).

Please find attached 11 copies of this letter for inclusion in each of the above-referenced dockets. Should you have any questions, please contact the undersigned.

Sincerely,

Mark J. O'Connor
Counsel for the Commercial Internet
eXchange Association

MJO/cce

cc: Thomas Power, Esq.

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FEDERAL COMMUNICATIONS COMMISSION
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Commercial Internet eXchange Association
Ex Parte Presentation
July 23, 1998

Internet Service Providers ("ISPs") And Implementation of Section 706 of the 1996 Act

Independent ISPs seek competitive and efficient access to advanced telecommunications services in order to continue to promote the Internet. As the nation's local telecommunications for data evolves and transitions towards broadband services, it is appropriate for the FCC to ensure the transition keeps the competitive ISP market intact, in the following ways:

Structural/Transactional Issues:

Incumbent local exchange carriers ("ILECs") provide both in-region ISP services and sell the essential telecommunications inputs to competing ISPs. The deployment of new ILEC broadband services raises the potential for monopoly abuse against independent ISPs and other end users. The FCC should consider:

- *ISP Safeguards*: stronger regulatory safeguards/ enforcement ensuring that all independent ISPs have at least equal pricing, terms, and conditions of service that are provided by the ILEC to its affiliated ISP; and

- *Separating Retail from Wholesale Incentives:* ILECs that participate in the retail ISP market also supply ISP competitors with essential telecommunications inputs, which invariably leads to abuse. The FCC should explore ways to separate ILEC's retail and wholesale functions. A data separate subsidiary under the same corporate parent retains the economic incentives for ILEC to "cheat" on regulatory objectives.

- *End User Choice*: A right of end users to choose among competing ISPs and CPE for the provision of advanced telecommunications services; ILEC networks should support end user choice. In this way, a choice of competitive services are available to consumers.

Transport/Interconnection Issues:

ILEC services (e.g., ATM, Frame Relay) connect the ILEC's advanced network to the ISP. The ILEC's terms of service to ISPs have a significant impact on ISP access and the cost of

providing Internet service. Non-discriminatory, efficient, and competitive provision of such ILEC services must be encouraged with:

- clarification that interconnection obligation applies to ILECs' data networks;

- encouraging data competitive access providers (DCAPs) by unbundling the ILEC's ADSL service from the metropolitan area data transport. ISPs may choose among competing transport carriers to gain access to the ILEC offices.

- Independent ISP access to ILEC data networks on same price, terms, conditions as ILEC ISP affiliate.

CLEC Competition Issues:

ISPs will need CLEC-based advanced telecommunications competition to: obtain cost-based telecommunications; encourage ILEC's to serve ISPs better; and to encourage telecommunications innovation for additional Internet-based communications. CLEC competition can help sustain a competitive Internet industry only with:

- *Collocation* at ILEC offices on terms that are more efficient and flexible;

- *Interconnection* at points of aggregation, including remote terminal units of a DLC system;

- *UNE Access to Conditioned Loops* in a timely and cost-based manner;

- *UNE access to electronics* used by ILEC to provide advanced services;

- ILEC collocation/unbundling must permit CLECs to deploy a range of equipment/technologies demanded by end-users; and,

- Swift and effective enforcement of these rights.

For further information, please contact:

Ronald Plesser, Piper & Marbury, LLP (861-3969)
Mark O'Connor, Piper & Marbury, LLP (861-6471)

Commercial Internet eXchange Association Members
June 1998

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