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July 30, 1998

VIA HAND DELIVERY

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

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 today (11:30 am) with Dr. Robert Pepper and Stagg Newman of the Office of Plans and Policy and Jonathan Askin of the Common Carrier Bureau to discuss the above-captioned proceedings with regard to the implementation of Section 706 of the 1996 Act. Attending the meeting for CIX were Barbara Dooley, and Ronald Plesser and myself 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 concerned 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. 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 vast majority of American consumers. Internationally, the FCC's implementation of Section 706 will be looked to as a model, which further underscores the importance of a competitive framework. 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. In CIX's view, the FCC should consider ways in which the ILEC data networks are interconnected to other competing networks, and what obligations should apply to ILEC-affiliated data CLECs under Section 251(b). Finally, CIX is concerned that an interim order, or tentative conclusions, prior to the full consideration of the complex issues is premature, and could adversely affect CLEC and ISP investments.

The discussion generally focussed on the issues raised in the attached talking points and CIX's July 28 *ex parte* letter to Chairman Kennard, copies of which were distributed at the meeting. Attached hereto is a copy of the CIX talking points.

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: Dr. Robert Pepper
Stagg Newman
Jonathan Askin

Commercial Internet eXchange Association
Ex Parte Presentation
July 30, 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:

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