EX PARTE OR LATE FILED

SHER & BLACKWELL

ATTORNEYS AT LAW

SUITE 900
1850 M STREET, N.W.
WASHINGTON, D.C. 20036

TELEPHONE (202) 463-2500
FACSIMILE (202) 463-4950/4840

WRITER'S DIRECT DIAL NO.

MARK W. ATWOOD
NATHAN J. BAYER
ROBERT J. BLACKWELL
JOHN W. BUTLER
EARL W. COMSTOCK+
MARC J. FINK
R. FREDERIC FISHER*
JEFFREY F. LAWRENCE
ANNE E. MICKEY
PATRICK J. MITCHELL◊
KELLY A. O'CONNOR
WAYNE R. ROHDE
STANLEY O. SHER
DAVID F. SMITH
HEATHER M. SPRING**

*ADMITTED IN CA ONLY
+ADMITTED IN AK ONLY
◊ADMITTED IN AZ ONLY
**ADMITTED IN NY ONLY

SUITE 1200
ONE EMBARCADERO CENTER
SAN FRANCISCO, CA 94111
TELEPHONE (415) 732-3797
FACSIMILE (415) 732-3796

SUITE 510
15 EXCHANGE PLACE
JERSEY CITY, NJ 07302
TELEPHONE (201) 915-0100
FACSIMILE (201) 915-0393

GOVERNMENT RELATIONS
JEFFREY R. PIKE

RECEIVED
OCT 30 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

(202) 463-2514

October 30, 1998

BY HAND DELIVERY

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

Re: **In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (CC Docket No. 98-146)**

In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147)

Dear Ms. Salas:

Yesterday Charles Brewer, Chairman and Chief Executive Officer of MindSpring Enterprises, Inc. met at the request of Commission staff with Robert Pepper and Johnson Garret of the Office of Plans and Policy, Marcelino Ford-Levine of New Media Policy, Jennifer Fabian and Jonathon Askin of the Common Carrier Bureau, and Alan Cohen of the International Bureau. The meeting was to discuss the Commission's Notice of Inquiry and Notice of Proposed Rulemaking related to Section 706 of the Telecommunications Act.

At the meeting Mr. Brewer explained how MindSpring operates as a business in the current regulatory and technical environment, as well as the impact that the transition to a broadband, packet-switched environment will have on the Internet and the services that companies like MindSpring can provide. In particular, Mr. Brewer urged the Commission to ensure that in the evolving packet-switched broadband world that customers will continue to have access to the Internet Service Provider (ISP) of their choice without first having to go through an ISP affiliated with the Incumbent Local Exchange Carrier or the cable system owner.

The attached exhibits were given to the Commission staff. They summarize the items presented and the points Mr. Brewer made in his presentation.

I have hereby submitted four copies of this ex-parte notice and enclosure to the Secretary, two for each of the above captioned proceedings, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

Earl Comstock
Sher & Blackwell
Counsel for MindSpring Enterprises, Inc.

Enclosure

EX PARTE OR LATE FILED

Exhibit A - MindSpring Description

MindSpring is a national Internet Service Provider specializing in serving individual customers.

RECEIVED
OCT 30 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MindSpring Statistics:

Subscribers	600,000+ (including recent Spry acquisition)
Employees	800+
Revenues	$115 million (3rd quarter annualized)
EBITDA	$27 million (3rd quarter annualized)
Pretax Income	$16 million (3rd quarter annualized)
Headquarters	Atlanta

Relative size: Including all online service providers and telephone companies, MindSpring is the 5th largest ISP as measured by number of customers.

Distinguishing achievements: MindSpring has consistently earned top marks for quality of service and customer satisfaction. Our excellent customer support has attracted particular attention. Some recognition of note includes:

November 1997, CNET "Buy It" as the national ISP providing the best value.
December 1997, PC World named MindSpring the ISP with the best customer support.
April 1998, Home Office Computing "Best Buy" for Web Hosting.
June 1998, Smart Money Interactive "Best Buy".
July 1998, PC World "World Class Award for Best ISP."
July 1998 Family PC "Best ISP Start Page."

Exhibit B - Relative Profitability:

The point of this Exhibit is not to boast, but to point out that MindSpring's financial results represent effectively a "best case" scenario among ISPs of significant size.

Most recent quarter EBITDA as a percent of revenue:

MindSpring	**23%**
AOL	**19%**
Earthlink	**2%**
Prodigy	**-35% (first 6 months of '98)**
Verio	**-51%**

Exhibit C - What our Customers Want

What our customers and potential customers seem to care most about is having MindSpring deliver the basic components of our service extraordinarily well. We think those basics are as follows:

Basic 1 - Great start up experience and user interface.

* Software that loads simply and allows customers to connect easily.
* User interface that helps even inexperienced users find things of value.
* State of the art software applications - updated over time.

Basic 2 - Reliable, high performance network.

* Available (no busy signals).
* Reliable.
* High performance.
* Key network services like email and news are reliable and high performance.

Basic 3 - Great support.

* Available when you need it.
* Solves your problem.
* Makes you feel good!

That is it. Anything else is of comparatively minor importance.

Exhibit D - What work do we do?

Employees by department as of September, 1998

Department	Employees	% of Total
Technical Support	357	49%
Sales Desk	77	11%
Customer Service	63	9%
Network Operations	49	7%
Business Development	27	4%
System Administration	26	4%
Marketing	23	3%
Product Management	15	2%
Web Design	12	2%
Accounting Administration	12	2%
Billing	12	2%
Call Center Services	11	2%
Human Resources	11	2%
Information Technology	11	2%
System Software	10	1%
Consumer Software Dev.	4	1%
Ministry of Technology	4	1%
Corporate	3	0%
TOTAL	727	100%

The main message you should get from this is the tremendous importance of service and support to our business, and to our whole industry. Support is much more important in the ISP business than it has been in any other telecom business that has come before. It is the main thing we do. It is the heart of our company. When customers are asked why they like MindSpring, by far the number one reason they give is "great support."

Exhibit E - Expenses per customer and as a percentage of revenue

This is data from a recent MindSpring monthly financial statement. It presents the recurring revenue per dial up customer, and associated expenses. In order to provide a clearer picture, start up fees and expenses are not included, nor are revenues and expenses for MindSpring's other businesses such as web hosting and web design.

	$ per Customer	% of Revenue
Recurring revenue	$19.12	100%
Cost of revenue:		
System phone lines	$2.95	15%
Internet access	$0.28	1%
Wide area network	$0.43	2%
3rd party network*	$1.53	8%
Other	$0.06	0%
Total cost of revenue	$5.25	27%
General and administrative:		
Network operations	$1.00	5%
Engineering	$0.37	2%
Accounting	$1.17	6%
Corporate	$0.82	4%
Customer service	$0.40	2%
Other	$0.39	2%
Total G & A	$4.15	22%
Technical Support	$2.20	12%
Sales and Marketing	$3.45	18%
EBITDA	$4.08	21%
Depreciation	$1.44	8%

* About 20% of MindSpring customer connect through third party network "POPs". For those customers, system phone lines, Internet access, and wide area network effectively show up as the single number "3rd party network." Counting only customers served through MindSpring owned POPs, the cost of revenue numbers would be approximately as follows: System phone lines, $3.54 per customer or 19% of revenue; Internet access

$.34 or 2%; wide area network $.52 or 3%; 3rd party network 0%; and "other" constant at $.06.

Exhibit F - Changes in operations and economics in a broadband scenario

The primary message here is that the huge majority of our operations and most of our expenses are the same whether serving customers through a narrowband dial-up connection, or a broadband cable modem or DSL connection.

The primary differences would be in the system phone lines, Internet access, and wide area network expenses.

System phone lines - In either the DSL or cable modem scenario, MindSpring will not have any "system phone line" expense. This line item will be replaced by whatever fee we pay to the last mile owner to transport our traffic through the DSL or cable infrastructure to our customer's location.

Internet access and wide area network costs - will increase some because the average customer will send more traffic to and from the backbone if he has a high bandwidth connection. But, even very substantial percentage increase in these costs will not mean a large increase in the overall cost of serving a customer.

MindSpring has managed to make reasonable profits at a $20 price point, with "local loop" costs of around $3 per customer. Most other significant ISPs have not yet achieved this profitability. Costs other than local loop costs will increase some, but not dramatically, in a broadband environment.

Conclusion: to establish profitable broadband operations, competitive service providers will need to price their services more than $17 higher than the local loop fees paid to the last mile owners.

Exhibit G - Real world competitive broadband - the Knology-MindSpring example

Sharing of broadband infrastructure by competitive service providers is not technically challenging, and the business model to support it is easily understandable. Our agreement with Knology is a real world example.

Knology is a competitive cable operator that is overbuilding systems in some mid-sized southern markets such as Montgomery, Alabama, and Columbus and Augusta, Georgia. They are offering video, data, and telephony services under their own brand. They are also providing wholesale local data transport services to MindSpring.

Here is the essence of the deal:

* MindSpring connects its network to a router in the Knology head-end.

* Knology transports data packets through its hybrid fiber-coax network to and from MindSpring customers.

* MindSpring does all sales and marketing, service and support, installation, and billing.

* MindSpring pays Knology for this local data transport service through a router connect fee and a per customer fee.

* Knology competes with MindSpring through its own in-house ISP.

* Customers have a choice!

Exhibit H - Our policy view

We believe the following things to be true:

1. The core telecom offering of the future will be connectivity to the broadband, always-on, packet-switched network.

2. For the large majority of residential and small business customers, the only viable way to deliver this high bandwidth, two-way, always-on packet connectivity for many years to come will be through a wire. And there are only two choices: the telephone company wire or the cable company wire.

3. It does not make economic sense to rip up neighborhoods to install a large number of new wires to homes.

4. The benefits of having a competitive telecom market are dramatic and undeniable.

If one accepts the truth of these four points, and I believe one must, there is only one choice:

If we are going to have a competitive market for telecommunications services for residential customers, we must create an effective way to share the wires that lead to their homes.

Given the behavior and mindset of the last mile owners, this result will not come about without government involvement.

Finally, I would like to emphasize that we think the last mile owners that are investing in infrastructure such as two-way capable cable plant should reap a generous reward on their investment. They are taking risk and they deserve reward. But the way to earn that reward is not through monopoly or duopoly control of the residential telecom markets of the future. The societal cost of that is just much too high. The way to earn the reward is to profitably carry last mile traffic for many competitive service providers who will drive overall market development much faster than the last mile owner could ever hope to alone, thereby driving revenue and profit for the network owner.