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FEDERAL COMMUNICATIONS  
OFFICE OF THE SECRETARY

**By Hand**

Honorable Magalie Roman Salas  
Commission Secretary  
Federal Communications Commission  
Room TW-B204  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation Regarding the Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; GN Docket No. 00-185

Dear Ms. Salas:

On behalf of EarthLink, Inc. (EarthLink) we hereby submit an original and one copy of this notice regarding a permitted *ex parte* presentation in the above-referenced proceeding. On February 26, 2001, Dave Baker, EarthLink Vice President for Law and Public Policy, and Earl Comstock and John Butler of Sher & Blackwell met with Mr. William Friedman, Senior Legal Advisor to Commissioner Tristani, regarding the above-referenced docket.

Mr. Baker opened the meeting by describing EarthLink's experience in the Internet access market. EarthLink is the nation's second largest Internet service provider (ISP), with over 4.7 million customers, including 215,000 broadband subscribers, and is the only major ISP that is not affiliated with a cable company. Mr. Baker related that in the fourth quarter of 2000, EarthLink's dial-up access subscriber base remained flat, indicating that the dial-up market is a mature one, while the number of broadband subscribers increased by over 50 percent. Mr. Baker emphasized that the increasing consumer demand for broadband services makes prompt Commission action on the cable open access essential if consumers are to have meaningful choices of broadband Internet access providers. Mr. Baker stressed that the growth curve for the broadband Internet access market has now reached the point of

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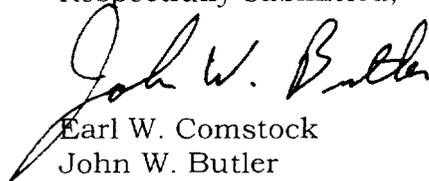
exponential growth that was experienced in the dial-up Internet access market approximately five years ago.

EarthLink representatives summarized the points made in EarthLink's comments and reply comments filed in Docket 00-185. Specifically, EarthLink reiterated that the Communications Act and long-standing Commission precedents make clear that Internet access is an information service that is provided to the public via a telecommunications service, and that facilities-based providers of information services (such as cable operators) are required as telecommunications carriers under title II of the Communications Act and the Commission's *Computer Inquiry* and *Frame Relay* proceedings to make available to competing information service providers (such as ISPs) on nondiscriminatory terms the underlying transmission services that the facilities-based information service providers use to offer their services to the public.

In response to cable industry arguments that cable companies are not offering Internet access and the associated telecommunications services over which Internet access rides to the public, EarthLink provided to Mr. Friedman a copy of the *ex parte* notice that EarthLink filed on January 31, 2001.

EarthLink closed the meeting by emphasizing that the pending Supreme Court consideration in its review of *Gulf Power Co. v. F.C.C.*, 208 F.3d 1263 (2000), of the central issue in the Commission's Notice of Inquiry, as well as other on-going litigation, presents a substantial risk that the Commission will forfeit its opportunity to decide the proper regulatory classification of "cable modem service" if the Commission does not act promptly.

Respectfully submitted,



Earl W. Comstock  
John W. Butler

Counsel for EarthLink, Inc.

cc: Mr. William J. Friedman, IV  
Ms. Johanna Mikes, Common Carrier Bureau  
Mr. Christopher Libertelli, Common Carrier Bureau  
Mr. Carl Kandutsch, Cable Services Bureau  
Mr. Douglas Sicker, Office of Engineering & Technology  
Mr. Robert Cannon, Cable Services Bureau  
International Transcription Service, Inc.