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January 4, 2002

By Hand

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation in GN Docket No. 00-185

Dear Ms. Salas:

In accordance with the Commission's regulations, this filing describes a permitted *ex parte* meeting regarding the above-referenced docket. On January 3, 2002, Earl Comstock and the undersigned met on behalf of EarthLink, Inc. ("EarthLink") with the following Commission personnel: John W. Berresford; Robert Cannon; William Cox; W. Kenneth Ferree; Peggy Greene; John Kiefer; J. Scott Marcus; John Norton; Robert Pepper; Royce Sherlock; Alan Stillwell; Jerry Stanshine; Sarah Whitesell. Not all named personnel were present for the entire meeting.

The discussion centered on the core issue previously raised by EarthLink in this proceeding. Namely, cable companies providing Internet access to the public for a fee over their own transmission facilities are common carriers with respect to the underlying telecommunications transport supporting such Internet access services. There is no legally supportable theory to the contrary.

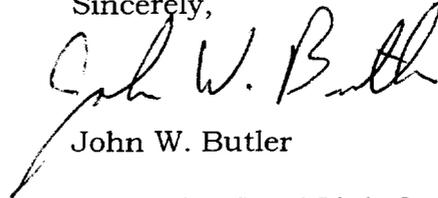
Specifically, EarthLink's representatives pointed out that the Commission has never allowed facilities-based providers of mass-market information services to escape common carrier regulation on the basis that such providers do not provide "pure transmission." Indeed, the "pure transmission" argument offered by the cable industry is simply the "contamination theory" by a different name. The Commission has repeatedly and emphatically refused to apply the contamination theory to facilities-based information service providers. Quite to the contrary, the Commission has expressly required that facilities-based information service providers separate out a "pure transmission" service and sell it to unaffiliated ISPs at tariff.

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Finally, EarthLink's representatives noted that allowing cable companies which provide Internet access over their own facilities to avoid common carrier obligations would encourage other common carriers, such as DSL providers, to claim a similar right to refuse service to ISPs. Such refusal of service by cable and DSL providers would have substantial negative impacts on the availability, affordability and usefulness of the broadband Internet.

Please direct any inquiries regarding this filing to the undersigned. Thank you for your kind assistance.

Sincerely,

A handwritten signature in black ink that reads "John W. Butler". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

John W. Butler

Counsel to EarthLink, Inc.

cc: Qualex International
John W. Berresford
Robert Cannon
William Cox
W. Kenneth Ferree
Peggy Greene
John Kiefer
J. Scott Marcus
John Norton
Robert Pepper
Royce Sherlock
Alan Stillwell
Jerry Stanshine
Sarah Whitesell