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HAND DELIVERY

William F. Caton, Acting Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

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

Dear Mr. Caton:

On February 8, 2002, James R. Coltharp of Comcast Corporation and I had a telephone conversation with Susanna Zwering, Legal Advisor to Commissioner Copps. On February 11, 2002, we had a similar telephone conversation with Susan Eid, Legal Advisor to Chairman Powell. In both conversations, we stressed points that have previously been presented in Comcast's prior written submissions in this docket. In addition, we made the following points:

- The Commission has an abundant record on which to decide that cable companies' will not be subject to "forced access" requirements in connection with their cable Internet services. This was the central issue in the Notice of Inquiry adopted 17 months ago; the matter has been fully debated; and a complete (and compelling) record has been developed that there is no need for the government to regulate the commercial dealings between cable operators that provide cable Internet service and third-party Internet service providers.
- A "no forced access" rule flows directly and immediately from a decision that cable Internet service is an interstate information service. For more than 20 years, since *Computer II*, the Commission has fenced off interstate information services from federal and state regulation, a wise decision that helped foster the growth of the Internet. Congress endorsed that policy in the Telecommunications Act of 1996, most notably by stressing the importance of preserving "the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2).
- Leaving this issue unresolved for many additional months is not in the public interest. To hold open the possibility of regulation, where the Commission has in the past consciously

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decided not to regulate, does not promote investment. Moreover, there is a significant difference between considering a proposal to impose regulation in an unregulated market (as would be the case with a Further Notice on cable Internet) and considering a proposal to deregulate currently regulated services (as is the case in certain other Notices of Proposed Rulemaking the Commission has recently issued or is reported to be contemplating).

- In the first of the two conversations, we also took issue with a recent ex parte report in which the National Association of Telecommunications Officers and Advisors asserted that the term “[i]nformation service” is really only relevant in the Title II context.” Letter from Nicholas P. Miller, Counsel for NATO, to Magalie Salas, FCC, CS Docket No. 00-185 (Jan 19, 2002). To the contrary, we noted that the term “information service” is expressly referenced in § 624(b)(1) of the Communications Act, 47 U.S.C. § 544(b)(1), which expressly forbids local franchising authorities from establishing requirements for information services in the context of requesting proposals for a new cable franchise or a franchise renewal.

Pursuant to section 1.1206(b)(2) of the Commission’s rules, an original and one copy of this letter are being filed with the Office of the Secretary. Copies of the letter are also being served on the Commission personnel involved.

Sincerely,

James L. Casserly

cc: Susanna Zwerling  
Susan Eid