

ORIGINAL

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VIA HAND DELIVERY

July 10, 2002

EX PARTE

Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
TW-A325  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RECEIVED

JUL 10 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

Re: Oral *Ex Parte* Presentation  
CC Docket Nos. 01-337; 02-33; 98-10; 95-20; 96-45; 98-171; 90-571; 92-237;  
99-200; 95-116; 98-170; NSD File No. L-00-72

Dear Ms. Dortch:

On July 9, 2002, Dave Baker, Vice President, EarthLink, and Mark O'Connor and the undersigned, of Lampert & O'Connor, met with Matthew Brill and Jennie Berry of Commissioner Abernathy's office, and met separately with Dan Gonzalez of Commissioner Martin's office. In these meetings, EarthLink described generally its business, including its broadband subscriber base. EarthLink also made several points that it has previously filed in comments and reply comments in the above-referenced dockets. Specifically, EarthLink discussed the importance of *Computer Inquiry* rules to its ability to obtain incumbent LEC wholesale DSL service, the potential for incumbent LEC discrimination against independent ISPs, and the legal underpinnings of common carrier status of incumbent LEC services as explained in its prior filings. EarthLink explained that incumbent LECs have offered DSL services to ISPs for several years, and ISPs have served to promote incumbent LEC DSL and advanced services. In EarthLink's view, the incumbent LEC commenters have not provided sufficient reason for prospective elimination of *Computer Inquiry* principles, although EarthLink has recommended in prior comments several improvements to the *Computer Inquiry* obligations. EarthLink also reiterated its position that incumbent LECs may not cease service offerings absent a Section 214 showing or offer service on a private carriage basis without Title II obligations. EarthLink also explained that it is contrary to the public interest to deregulate incumbent LEC services in the name of regulatory parity. Finally, with Mr. Gonzalez, EarthLink briefly discussed its position that USF charges should not apply to ISPs, and that carriers currently take various approaches to pass-through of USF charges.

EarthLink also discussed the inadequacies of intermodal competition in the current market for wholesale broadband access, including that satellite and fixed wireless represent a very small and, in the case of fixed wireless, seemingly diminishing portion of that market. While EarthLink

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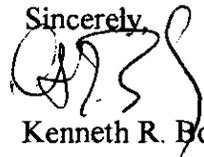
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is "platform agnostic" and it uses available broadband access platforms, the vast majority of its broadband customers use either DSL or cable. During the meetings, and as an example of EarthLink's position that consumers in many markets have access only to DSL or limited cross-platform competition, EarthLink discussed the study described in the Reply Comments filed by the California Public Utilities Commission in CC Docket 01-337 (April 22, 2002).

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, ten copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceedings. Should you have any questions, please contact me.

Sincerely,



Kenneth R. Boley

CC: Matthew Brill  
Dan Gonzalez  
Jennie Berry