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VIA HAND DELIVERY

July 11, 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

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

Re: Oral Ex Parte Presentation
CC Docket Nos. 01-337, 02-33

Dear Ms. Dortch:

On July 10, 2002, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner, Inc. ("AOL"), Donna N. Lampert and the undersigned, both of Lampert and O'Connor, P.C., met with Jordan Goldstein, Legal Advisor to Commissioner Michael Copps and Nguyen Vu and Christian Wagner of his office.

In the meeting, we discussed AOL's positions as presented in its Reply Comments in CC Docket 01-337, filed on March 22, 2002 and its Comments and Reply Comments in CC Docket 02-33, filed on May 3, 2002 and July 1, 2002 respectively. Specifically, we discussed today's regulatory, legal and business framework whereby consumers acquire DSL-based broadband Internet access services from Internet Service Providers ("ISPs") who are, in turn, wholesale ADSL customers of ILECs. We also explained that since the incumbent local exchange carriers ("ILECs") serve as the primary providers of wholesale high speed transmission services used by ISPs as an input to their broadband Internet access information services, whether the ISP is independent or ILEC-affiliated, there is no basis for the FCC to conclude that the ILECs are non-dominant in the provision of wholesale broadband transmission services. We further explained that because cable operators do not offer transmission services to ISPs, but rather offer an unregulated retail information service to end users, cable modem service offers no basis to alter the current classification of ILEC broadband services as telecommunications services. In this regard, we stressed that regulatory parity should not be viewed as an end in itself; instead, the Commission should look at the impact on consumers of undermining the highly competitive environment for Internet access services that exists today. Further, we emphasized that the ILECs' high speed transmission services used by ISPs have been classified as

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telecommunications services for sound legal and policy reasons and that there is no basis for the FCC to alter this classification at this time.

AOL noted that not only is the record devoid of any evidence that ILEC investment has been inhibited, but even assuming such were the case, the FCC must consider *overall* investment, including the investment from the thousands of unaffiliated ISPs that have reasonably relied upon the open regulatory framework established by the *Computer Inquiry* rules to create their businesses. We stated that overall investment is best spurred by the FCC's current open framework, predicated on the bedrock principles of the FCC's *Computer Inquiry* precedent.

AOL also discussed the FCC's *Fifth Report and Order* in CC Docket No. 96-262, regarding access pricing flexibility and observed that through this decision, the ILECs already have a clear path to pricing flexibility for ADSL services, consistent with what they are seeking in the above-referenced proceedings. We noted that some ILECs have already obtained this deregulation, granting them greater pricing freedom while prohibiting discrimination, exclusionary treatment and unreasonable terms and conditions.

Finally, AOL emphasized that the FCC's *Computer Inquiry* framework, designed to ensure that ISPs are able to obtain transmission services from ILECs at just and reasonable rates and on nondiscriminatory terms and conditions, has not been shown to be a burden. Altering the regulatory treatment and/or classification of ADSL services will prevent the FCC from continuing to ensure the fair treatment of unaffiliated ISPs as compared to affiliated ISPs. AOL urged that while some updating of this framework may be in the public interest, elimination of the core requirements of access and nondiscriminatory treatment is not.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, two copies of this Notice are being provided to you for inclusion in the public record in each of the above-captioned proceedings. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Linda L. Kent

cc: Jordan Goldstein
Nguyen Vu
Christian Wagner