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VIA HAND DELIVERY

AUG - 9 2002

August 9, 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

EX PARTE

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

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

Dear Ms. Dortch:

On August 8, 2002, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner Inc. ("AOL"), Donna N. Lampert and the undersigned, both of Lampert & O'Connor, P.C., met with John Rogovin, Linda Kinney and Andrea Kearney of the Office of General Counsel to discuss the above-referenced dockets.

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 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 wholesale broadband services as telecommunications services. In this regard, we stressed that Congress has not adopted regulatory parity as either a statutory obligation or a policy goal, but has maintained separate statutory obligations for cable and telecommunications service providers. Further, we explained that the ILECs' high speed transmission services used by ISPs have been classified as telecommunications services for sound legal reasons and that there is no legal basis for the FCC to alter this classification at this time. The FCC should reaffirm its conclusions in its *Report to*

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*Congress*, 13 FCC Rcd 1150, that ISPs, as information service providers, are not subject to universal service contributions.

AOL urged the Commission to look at the impact on consumers of undermining the highly competitive environment for Internet access services that exists today. The FCC has created a successful regulatory environment that ensures that all ISPs – whether independent or carrier affiliated – are afforded access to telecommunications inputs provided by ILECs on non-discriminatory rates, terms and conditions. For example, AOL explained that overall investment is best spurred by the FCC's current open framework, predicated on the principles of the FCC's *Computer Inquiry* precedent. The FCC's objective should be to spur *overall* investment, including the investment from the thousands of unaffiliated information service providers that have reasonably relied upon the open regulatory framework to create their businesses, not just ILEC investment which has not in fact been burdened by the application of the *Computer Inquiry* rules. These safeguards do not require a particular rate-setting methodology such as TELRIC, but rather require fair treatment of unaffiliated ISPs as compared with affiliated ISPs. While some updating of this framework may be in the public interest, elimination of the core requirements of access and nondiscriminatory treatment is not.

AOL also discussed the FCC's *Fifth Report and Order* in CC Docket 96-262, regarding access pricing flexibility and emphasized 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 discussed the fact that some ILECs have already obtained this deregulation, granting them greater pricing freedom while prohibiting discrimination, exclusionary treatment and unreasonable terms and conditions.

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: John Rogovin  
Linda Kinney  
Andrea Kearney