

ORIGINAL

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EX PARTE OR LATE FILED

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VIA HAND DELIVERY

December 20, 2002

EX PARTE

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral *Ex Parte* Presentations
CC Docket No. 01-337

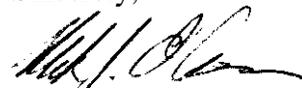
Dear Ms. Dortch:

On December 19, 2002, the undersigned spoke with Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, via telephone regarding the SBC Forbearance Petition of October 3, 2001, incorporated into the above-referenced docket. In this call, EarthLink reiterated several points it has previously filed in the docket. Namely, a Commission decision on nondominance would be inappropriate at this time. Similarly, the lack of an FCC order on the Petition would also be inappropriate, as it would allow SBC's Petition to be granted by operation of law and would lead to additional uncertainty for the parties affected. EarthLink also stated that, if detariffing were to be adopted, the decision should make clear the procedural processes.

In addition, on December 20, 2002, the undersigned spoke with Jeffrey Carlisle, Senior Deputy Chief of the Wireline Competition Bureau. In this conversation, EarthLink stated that, if detariffing is adopted, then the Commission should clarify the procedures and processes for detariffing as it has done in prior detariffing orders, so that all parties have a greater degree of certainty in the implementation of such detariffing. EarthLink also reiterated that detariffing should not be used as a means of undermining long-term arrangements with ISPs.

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

Sincerely,



Mark J. O'Connor
Counsel for EarthLink, Inc.

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 **Lampert & O'Connor, P.C.**

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CC: Matthew Brill
Jeffrey Carlisle