

# COVINGTON & BURLING

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February 3, 2003

FILED ELECTRONICALLY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: CS Docket No. 02-52; CC Docket Nos. 02-33, 95-20 & 98-10; and GN  
Docket No. 00-185  
Notice of Ex Parte Presentation**

Dear Ms. Salas:

Submitted herewith pursuant to Section 1.1206(b)(2) of the Commission's rules is a notice regarding a permitted oral *ex parte* presentation in the above-captioned proceedings. On January 31, 2003, Paul Misener, Vice President of Global Public Policy at Amazon.com, and Jon Blake and Amy Levine of Covington & Burling met with Commissioner Kevin Martin and Dan Gonzalez and Catherine Bohigian, legal advisors to Commissioner Martin, concerning Amazon.com's December 2, 2002, *ex parte* submission in the above-captioned proceedings.

Amazon.com urges the Commission to adopt a rule that will preserve and protect residential consumers' unfettered access to Internet-based information, products and services by ensuring that broadband service providers and broadband ISPs will not restrict a consumer's access to Internet content based on knowledge of the consumer's request for particular content. Amazon.com's proposed rule would (i) bar broadband service providers from impairing residential consumer access and (ii) give them a choice of either imposing the same requirement on broadband ISPs or opening their networks to multiple, unaffiliated and mutually independent ISPs.

At the meeting, we discussed the proposed rule, as well as the Commission's jurisdiction to adopt such a measure. The D.C. Circuit's recent decision in *MPAA v. FCC*, No. 01-1149 (D.C. Cir. Nov. 8, 2002), does not change the conclusion that the FCC has jurisdiction because the *MPAA* case was closely tied to programming content and the fact that the video description rules are "not a regulation of television transmission that only incidentally and minimally affects program content" but "invariably would entail subjective and artistic judgments that concern and

COVINGTON & BURLING

Ms. Marlene H. Dortch  
February 3, 2003  
Page 2

affect program content.” Adopting a non-impairment regime in the broadband context would, by contrast, preserve consumers’ right to access their choice of content absent interference by network operators. We also discussed the ostensible timing of Commission action in these proceedings.

Kindly address any questions to the undersigned.

Sincerely,



Jonathan D. Blake  
Amy L. Levine  
*Counsel to Amazon.com*

cc: Commissioner Kevin Martin  
Dan Gonzalez  
Catherine Bohigian