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VIA ELECTRONIC FILING

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

Re: Notice of Oral *Ex Parte* Presentation
CC Docket Nos. 01-338, 96-98, 98-147; 02-33, 95-20, 98-10;01-337

Dear Ms. Dortch:

Mr. Garry Betty, CEO and President of EarthLink, and Mr. Dave Baker, Vice President for Law and Public Policy for EarthLink, had a telephone conversation this afternoon with Commissioner Kevin Martin and Emily Willeford, Special Assistant for Legislative and Public Affairs, concerning the above-referenced proceedings. During the discussion, EarthLink reiterated points previously submitted in the above-referenced dockets regarding the importance of preserving line sharing as an unbundled network element (UNE). In addition, EarthLink pointed out that it has invested over \$500,000 over the past 4 years in the marketing and promotion of DSL services throughout the country. EarthLink stated that while it offers broadband services over a variety of platforms and purchases DSL services from incumbent LECs, it nonetheless relies on Covad, a CLEC, for much of its DSL provisioning.

In response to questions concerning the Court's remand and vacatur of the Commission's UNE rules, EarthLink asserted that the Court's requirement that the Commission consider the presence of cable modem access in a market is flawed. Not only are there barriers to an end user switching from DSL to cable modem service (e.g. cost of new CPE, early termination charges, new e-mail address), but most ISPs have no access to the cable modem platform. (EarthLink being a partial exception with access to cable in Time Warner Cable systems and 2 Comcast cities.) DSL is thus the only broadband platform available to most ISPs. Elimination of line sharing would thus result in interruption of service to hundreds of thousands of DSL customers.

In response to questions regarding line splitting where CLECs provide a customer's local voice service, EarthLink pointed out that ILECs still control some 85 -90% of local voice lines as well as the vast majority of DSL lines.

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In response to concerns that some state PUCs have set rates for the line sharing UNE at zero, EarthLink stated its belief that Covad is paying incumbent LECs for line sharing. In response to questions as to whether incumbent LECs would continue to offer reasonable rates for line sharing on a contractual basis if the Commission were to eliminate the line sharing UNE, EarthLink pointed to the substantially higher rates that Covad had to pay before the Commission's November 1999 line sharing order as evidence to the contrary. EarthLink further pointed out that if line sharing were eliminated, ILECs would continue to enjoy line-sharing economics for their own DSL offerings.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, electronic 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 contact me.

Sincerely,

/s/

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

CC: Commissioner Kevin Martin
Emily Willeford