

COALITION OF BROADBAND USERS AND INNOVATORS

March 4, 2003

FILED ELECTRONICALLY

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

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

Dear Ms. Dortch:

Submitted herewith pursuant to Section 1.1206(b)(2) of the Commission's rules is a notice regarding permitted oral *ex parte* presentations in the above-captioned proceedings. On March 4, 2003, members of the Coalition of Broadband Users and Innovators, including Craig Mundie and Paula Boyd of Microsoft Corp., Andrew Jay Schwartzman of Media Access Project, Veronica O'Connell of the Consumer Electronics Association, Mark Uncapher of the Information Technology Association of America, and the undersigned on behalf of the Coalition met with Commissioner Martin and legal advisors Dan Gonzalez and Catherine Bohigian and Commissioner Adelstein and Senior Legal Advisor Lisa Zaina, concerning the importance of ensuring connectivity principles in the broadband era, *i.e.*, assuring that broadband users continue to have unfettered access to their choice of Internet content, applications, and services using any nonharmful device without interference from network operators. In addition, Mss. Boyd and O'Connell and Messrs. Schwartzman and Waldron met with Jordan Goldstein, Senior Legal Advisor to Commissioner Copps to discuss these same issues.

The parties explained that the Coalition is a broad consortium of content providers, equipment vendors, consumer groups, and software and hardware companies, including Yahoo!, eBay, Amazon.com, Apple, AeA, RadioShack, NAM, the Alliance for Public Technology, and many others. These broadband users and innovators have joined together because of their common concern about the future of the Internet and whether consumers will be able to access their choice of content and use the devices they want on the broadband network going forward without interference from the broadband network. This concern applies across all broadband platforms, including wireline and cable, because in a deregulated environment the opportunity and motive to interfere with consumer access to the Internet would be the same. The Coalition is concerned that uncertainty about unfettered access to broadband networks would stifle innovation because content and equipment providers would not be assured that their new offerings would be reachable on the Internet.

Mr. Schwartzman described citizen expectations about what the "Internet" means — open and unfettered access to users' choice of lawful content using any nonharmful devices. However, these well-established citizen expectations are at risk if telephone or cable platforms can operate their networks to interfere with citizens' enjoyment of access to the Internet as they know it. These risks are more than speculative: the parties discussed evidence in the record establishing that cable companies are reserving in subscriber agreements the ability to discriminate against certain consumer applications and devices, while network equipment makers are marketing routers and other network equipment that will permit operators to bit discriminate. The parties also emphasized that the marketplace will not provide a meaningful check on discriminatory behavior, because the broadband duopoly will exist for the foreseeable future. New technologies such as Wi-Fi hold promise for a possible third broadband pipe, but their entry into the market as meaningful competitors is too speculative and remote to serve as any counterforce to the market behavior decisions of duopoly providers. The parties also explained that when confronted with a duopoly market in the past, such as with the cellular duopoly in the early 1980s, satellite digital radio in the 1990s, or most recently the proposed merger of DirecTV and EchoStar, the Commission has not permitted a duopoly market to exist without requiring significant consumer protections.

Finally, Ms. O'Connell and Mr. Uncapher discussed the tremendous innovation and investment that has been unleashed over the last two decades by the concept that consumers can attach their choice of nonharmful devices to the network. Billions of dollars have been invested in research and development, and numerous devices — including fax machines, caller ID, and computers — were born out of the simple concept that consumers do not need a network operator's permission to attach devices. The wireline network has thrived in this environment, and the broadband world, whether run by a cable company or a telephone company, similarly should ensure consumer choice.

Kindly address any questions to the undersigned.

Sincerely,



Gerard J. Waldron

cc: Commissioner Kevin Martin
Commissioner Jonathan Adelstein
Mr. Jordan Goldstein
Ms. Catherine Bohigian
Mr. Dan Gonzalez
Ms. Lisa Zaina
Mr. Jon Cody
Dr. Robert Pepper
Mr. Kyle Dixon
Ms. Barbara Esbin
Ms. Linda Senecal