



March 14, 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 and GN Docket No. 00-185
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 a permitted oral *ex parte* presentation in the above-captioned proceedings. On March 13, 2003, representatives of the Digital Media Association, including Ethan Evans of Lightningcast, Dale Mohlenhoff of Thomson Multimedia, Gail Schliemann of Onion River Radio, Bob Ohlweiler of MusicMatch, and Daniel Horowitz, Federal Affairs Director, and Amy Levine of Covington & Burling met with Peter Corea, Kyle Dixon, Barbara Esbin, Marjorie Greene, Jamila Bess Johnson, Mary Beth Murphy, and John Norton of the Media Bureau concerning whether consumers in the future will be able to access the Internet content and use the devices they want on the broadband network.

Messrs. Evans and Ohlweiler and Ms. Schliemann explained that their small companies provide the dynamic and innovative products and services that drive consumers to broadband service. Lightningcast, a webcasting service based in Alexandria, Virginia, works with broadband content providers to insert targeted advertising in streaming multimedia and audits consumer impressions in real time. Onion River Radio, a locally-focused Internet radio station operating out of Montpelier, Vermont, provides an exciting array of music that captures the spirit of Vermont to thousands of listeners around the world. MusicMatch is a digital jukebox service that offers users the ability to enjoy their choice of music both on their PC and through the Internet. Mr. Mohlenhoff discussed the devices being produced by Thomson, an equipment manufacturer that creates the devices that consumers use both to connect to the broadband network as well as to enhance their broadband lifestyle.

The parties discussed how the tremendous innovation and investment unleashed over the last two decades by the concept that consumers may reach their choice of Internet content



would be stifled if content providers are uncertain as to whether their new offerings will be equally accessible to all consumers via the Internet. Equally important to the growth of and investment in broadband Internet access is the ability of consumers to attach their choice of legitimate devices to the network. The history of the Internet has been characterized by consumer ability to reach any lawful Internet content, service, or application via an ever-increasing repertoire of products and services. The success of the DiMA representatives' respective enterprises, which are emblematic of hundreds of small companies doing business on the Internet, is a direct result of this legacy of openness and equal opportunity. If their companies were forced to negotiate with network operators in order to launch their businesses five to seven years ago, most of them would not be thriving today. Moreover, access to compelling digital content is what drives consumer acceptance and purchase of broadband access, both at home and in the workplace. And consumer acceptance leading to broadband deployment is an important policy goal.

The parties discussed evidence in the record establishing that cable companies have reserved 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 favor some bits over others. Furthermore, cable companies have refused affirmatively to commit to not interfering with consumer access on an ongoing basis. 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. The entry of new technologies like wireless and satellite into the market as meaningful competitors is too speculative and remote to serve as any counterforce to the market behavior decisions of duopoly or monopoly broadband 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 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 or has rejected it outright.

Finally, the parties discussed the targeted nature of the relief they are seeking: adoption of a requirement that a provider of broadband services not unreasonably interfere with or impair subscribers' ability to use their broadband service to access lawful content on the Internet. Such a principle would not in any way restrict a provider from adopting a nondiscriminatory system of tiered pricing for consumers based on their actual use of the broadband service or from entering into promotional arrangements with third parties that solely give such parties an advantageous position on the first screen or other menu options presented to subscribers. In sum, the parties emphasized that just as it would be unlawful for a telephone company to route a call placed to 1-800-LL BEAN to a different destination such as 1-800 LANDS END, or to slow down the set-up time or impair the quality of such a call, a network operator should not be permitted to reroute traffic from www.llbean.com to www.landsend.com, or to impair the timeliness or quality of the connection for unreasonably discriminatory reasons.



Kindly address any questions to the undersigned.

Sincerely,

Daniel Horowitz/dhz

Daniel Horowitz
Federal Affairs Director
Digital Media Association

cc: Mr. Peter Corea
Mr. Kyle Dixon
Ms. Barbara Esbin
Ms. Peggy Greene
Ms. Jamila Bess Johnson
Ms. Mary Beth Murphy
Mr. John Norton
Ms. Linda Senecal