

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

WASHINGTON
NEW YORK
SAN FRANCISCO
LONDON
BRUSSELS

GERARD J. WALDRON
TEL 202.662.5360
FAX 202.778.5360
GWALDRON@COV.COM

March 27, 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 26, 2003, Paula Boyd of Microsoft and the undersigned, on behalf of the Coalition of Broadband Users & Innovators, met with Simon Wilkie of the Office of Strategic Planning & Policy Analysis concerning whether consumers in the future will be able to access the Internet content and use the devices they want on the broadband network.

The parties discussed with Mr. Wilkie 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 lawful devices to the network. The history of the Internet, and in fact the history of the telecommunications industry since *Carterfone*, has been characterized by consumer ability to reach any lawful content, service, or application via an ever-increasing array of products and services.

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 devices that will permit operators to favor some bits over others. The parties also emphasized that the marketplace will not provide a meaningful check on discriminatory behavior because of the likelihood that a broadband duopoly will exist for the foreseeable future. The entry of new technologies such as wireless and satellite into the market as

Ms. Marlene H. Dortch
March 27, 2003
Page 2

meaningful competitors is too speculative and remote to serve as any counterforce to the market-based behavior of duopoly or monopoly broadband providers.

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. The parties explained that how bits are handled by the network operator should be dictated by consumer choice and not by operator preferences. 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.

Kindly address any questions to the undersigned.

Sincerely,



Gerard J. Waldron

cc: Mr. Simon Wilkie
Ms. Barbara Esbin
Ms. Linda Senecal
Ms. Paula Boyd