

ORIGINAL

Linda L. Kent
kent@l-olaw.com

EX PARTE OR LATE FILED
FILED
MAR 10 2003
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

March 10, 2003

EX PARTE

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

RECEIVED

MAR 10 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral *Ex Parte* Presentation
CC Docket Nos. 02-33 and 01-337

Dear Ms. Dortch,

On March 7, 2003, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner Inc. ("AOL"), Donna Lampert and the undersigned, both of Lampert & O'Connor, P.C., met with Michael Carowitz, Cathy Carpino, Gail Cohen, Jane Jackson, William Kehoe, Carol Matthey, Terri Natoli and Brent Olson of the Wireline Competition Bureau and Harry Wingo of the Office of General Counsel.

In the meeting, consistent with previously filed comments, AOL urged the Commission to continue to promote wireline broadband information services competition. The specific points discussed during the meeting are contained on the attachment.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, two copies of this letter are being provided to you for inclusion in the public record of each of the above-captioned proceedings. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Linda L. Kent

Counsel for AOL Time Warner Inc.

Attachment

CC: Michael Carowitz Carol Matthey
Cathy Carpino Terri Natoli
Gail Cohen Brent Olson
Jane Jackson Harry Wingo
William Kehoe

No. of Copies rec'd
List ABCDE

03

WIRELINE BROADBAND INFORMATION SERVICES COMPETITION: PROMOTING BROADBAND DEPLOYMENT

Why Should The FCC Continue To Promote Full Wireline Broadband Information Services Competition?

Consumers benefit directly from wireline information services competition through lower prices, better quality, more innovation and greater selection to serve their diverse tastes.

- With competition, all ISPs have a strong incentive to improve their services, prices, support, content and other features; this remains true today in narrowband.
- 3 Broadband demand will be most stimulated by promotion of numerous, diverse ISPs.
 - o ISP marketing is a crucial link to consumer broadband adoption; the more competition, the more ISP marketing.
 - o ISPs innovate including with new applications and feature, content aggregation/distribution and other features, also sparking demand.
- 3 Incentives to invest will be the greatest if information service competition policy is retained.
 - o All ISPs, not just BOC-affiliates, will have incentive to offer high-quality, differentiated and innovative service – overall investment will rise.
 - o Proposal to create new Title I model will create climate of uncertainty at best, impeding ability to raise and spend capital and worse, reduce the number of ISPs drastically, diminishing incentives to invest and compete.
 - o Proposed Title I approach is subject to legal challenge as it cannot meet *NARUC* I test or statutory mandate. Judicial precedent confirms Title II approach.

Are the FCC's Current Rules Necessary to Promote Wireline Broadband Information Services Competition?

While the FCC's current rules encompass two essential principles – equal treatment for all ISPs and unbundled access to basic telecommunications inputs – streamlining would well serve the public interest.

- Rules are necessary to prevent anticompetitive and discriminatory conduct in provisioning DSL services; *e.g.*, degradation of DSL throughput speed or reduction in guaranteed minimum speed DSL.
- 3 Court decisions and decades of rule updates and changes have created some rule overlap, excessive complexity, and inefficiency.
- 3 In addition, as the industry and services have changed, requirements are not always suited to realities of information service provision (*e.g.*, BOC outsourcing and preferential arrangements).

FCC should streamline and update rules to create a framework that eliminates unnecessary burdens and is well-suited to attaining information services competition.

What Would New Streamlined Rules Look Like?

To promote full and fair information services competition, the rules must require:

- That all ISPs are provided non-discriminatory access to transmission services and capabilities;
- 3 Transparency, whether through tariffs or other mechanism (*e.g.* web-posting);
- 3 Access to new transmission services and capabilities at reasonable rates; and
- An ISP-specific efficient enforcement mechanism to promote speedy service delivery and timely redress.