

 **Lampert & O'Connor, P.C.**

1750 K Street NW
Suite 600
Washington, DC 20006

Kenneth R. Boley
boley@l-olaw.com

Tel 202/887-6230
Fax 202/887-6231

FILED ELECTRONICALLY

May 14, 2003

EX PARTE

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. 02-33, 98-10, 95-20; 01-337

Dear Ms. Dortch:

On May 13, 2003, Mark J. O'Connor of this firm and the undersigned met with Commission staff in two separate meetings to discuss the *Wireline Broadband* proceeding on behalf of EarthLink, Inc. The first meeting included James Carr, Jeff Dygert, Andrea Kearney, Chris Killion, Linda Kinney, John Stanley, and Harry Wingo, all of the Commission's Office of General Counsel. The second meeting included William Maher, Carol Matthey, Brent Olson, and Diana Law-Hsu, all of the Wireline Competition Bureau.

During both meetings, the parties discussed the EarthLink *ex parte* letter filed April 29, 2003, explaining the legal framework requiring incumbent local exchange carriers ("LECs") to provide wholesale DSL to independent Internet service providers ("ISPs") on a common carrier basis. EarthLink expressed the importance of continued access to wholesale DSL on terms no less advantageous than those an incumbent LEC offers its preferred ISP, whether that ISP be affiliated or unaffiliated with the incumbent LEC. EarthLink observed that although application of NARUC I and its progeny may lead in the future to different legal conclusions depending on market conditions and other public interest factors, the current market conditions as reflected in the record of this proceeding require Title II treatment of ILEC wholesale DSL. Further, EarthLink explained the importance of competition in the wholesale DSL market and the detrimental effects of a private carriage reclassification upon consumers' ability to obtain the current variety of Internet services and functions from independent ISPs at retail.

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The parties also discussed the EarthLink *ex parte* letter filed May 12, 2003, addressing certain Bell Operating Company allegations regarding the costs and benefits of Comparably Efficient Interconnection (“CEI”) and Open Network Architecture (“ONA”) provisions, as well as other materials filed by EarthLink in this proceeding. As an example of the predatory behavior *Computer Inquiry* is meant to discourage, and underscoring the need for continued Title II regulation, EarthLink described Verizon’s recent reduction of the difference between its wholesale DSL price and its retail high-speed Internet access service price from \$20 to only \$8. EarthLink expressed its view that Verizon is discriminating unreasonably by selling DSL access to its preferred ISP at prices below the tariffed rates, and further that Verizon’s inflated wholesale DSL prices enable the BOC illegally to cross-subsidize its Internet access service. EarthLink emphasized that weakening *Computer Inquiry* requirements or reclassifying wholesale DSL to be private carriage would aggravate Verizon’s anticompetitive behavior, eliminating key legal tools for the defense of independent ISPs and a nation of end-users who benefit from today’s vigorous competition among ISPs.

Pursuant to Section 1.1206(b)(2) of the Commission’s Rules, eight copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceedings. Should you have any questions, please contact me.

Sincerely,

/s/

Kenneth R. Boley
Counsel for EarthLink, Inc.

cc: Jim Carr
Jeff Dygert
Andrea Kearney
Chris Killion
Linda Kinney
Diana Law-Hsu
Bill Maher
Carol Matthey
Brent Olson
John Stanley
Harry Wingo