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VIA ELECTRONIC FILING

May 22, 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 21, 2003, Dave Baker, Vice President for Law and Public Policy, EarthLink, Inc., and the undersigned met with Jessica Rosenworcel, Legal Advisor to Commissioner Copps, and with Matthew Brill and Anna Mackowiak, of Commissioner Abernathy's office, to discuss the *Wireline Broadband* proceeding. The parties discussed the EarthLink *ex parte* letter filed April 29, 2003 (which had been previously sent to Ms. Rosenworcel and Mr. Brill), explaining the Title II legal framework requiring incumbent local exchange carriers ("LECs") to provide wholesale DSL to independent Internet service providers ("ISPs") on a common carrier basis. EarthLink explained, as reflected in the record, that it has voluntarily proposed streamlining certain *Computer Inquiry* provisions, but that the Title II legal framework must be preserved. EarthLink expressed the importance of consumers' ability to choose among multiple ISPs, which compete on service quality, price, anti-spam features, privacy protection, parental controls and other differentiating features.

In the meeting with Ms. Rosenworcel, EarthLink further explained that *Computer III* access to basic transmission services is predicated on Title II, and that Title I regulation would impose less assurance of access and greater legal uncertainties for ISPs. Moreover, EarthLink explained that international regulators look to the *Computer Inquiry* rules as a model of regulatory success. In the meeting with Mr. Brill and Ms. Mackowiak, EarthLink also explained that under current market conditions, Title II regulation of incumbent LEC telecommunications

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services is required under NARUC I. EarthLink also emphasized the general lack of availability to ISPs of alternate broadband platforms, with cable access being generally unavailable to ISPs.

EarthLink also emphasized FCC precedent treating DSL transport provisioned to ISPs as a “telecommunications service” and that consumers use such services today to connect to ISPs. By contrast, “private carriage” would effectively result in no reasonable BOC/ISP carriage arrangements at all. Even under current rules today, BOCs engage in wholesale price discrimination and/or predatory retail pricing, as suggested by Verizon’s recent re-pricing of its retail DSL offering to within a few dollars of what it charges for its wholesale DSL service.

Pursuant to Section 1.1206(b) of the Commission’s Rules, one copy of this Notice is being filed electronically in each of the above-captioned proceedings. Should you have any questions, please contact me.

Sincerely,

/s/

Mark J. O’Connor
Counsel for EarthLink, Inc.