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**FILED ELECTRONICALLY**

May 30, 2003

**EX PARTE**

Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
TW-A325  
445 12<sup>th</sup> 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 29, 2003, Dave Baker, Vice President for Law and Public Policy, EarthLink, Inc., and the undersigned met with Daniel Gonzalez of Commissioner Martin's office, Lisa Zaina and Scott Bergmann of Commissioner Adelstein's office, and Simon Wilkie, Robert Cannon, and Robert Pepper, all of the Office of Strategic Planning and Policy Analysis, to discuss the *Wireline Broadband* proceeding.

At these meetings, EarthLink restated its positions described in documents previously filed in the above-referenced dockets. In addition, EarthLink explained that requiring ILEC providers of wholesale DSL transmission service to maintain a DSL tariff, yet simultaneously permitting those providers to offer superior rates, terms and conditions to affiliated or non-affiliated preferred ISPs will subject other, non-preferred ISPs to untenable competitive disadvantages and ultimately harm consumer welfare. Given the opportunity, ILECs will discriminate against non-preferred ISPs not only by charging them higher prices for wholesale DSL transmission, but also by offering them less favorable terms and conditions on speed, service quality, and usage restrictions. Recognizing the dangers of such permissive discrimination, the FCC may attempt to establish safeguards in an effort to protect against price squeeze, but such measures would not protect against the pernicious effects of discrimination on other terms and conditions of service. As a result, ILECs could ensure that non-preferred ISPs would be unable to compete not only on price, but also on speed and service quality. Such a result would immediately harm consumer welfare by reducing the quality and increasing the cost of service from "non-preferred" ISPs and further harm it in the long run by eliminating competitive broadband Internet access services.

**■ Lampert & O'Connor, P.C.**

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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.