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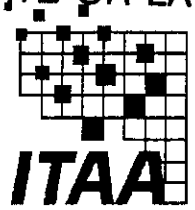

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INTERNET
Commerce & Communications
DIVISION

Mark Uncapher
Senior Vice President & Counsel

May 23, 2003

Ms. Marlene H. Dortch,
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20054

Re: Ex Parte Presentation of the Information Technology Association of America – CC Docket 02-33, CC Docket 01-337, & CC Docket 96-45

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b), this letter is to inform you that *ex parte* presentations were made on Thursday May 22, 2003 at meetings regarding issues in the above-referenced proceedings.

Participating in the meeting were: Jane Jackson, Bill Maher Carol Mattey, and Brent Olson of the WCB.

They met with; Kim Ambler, Dir, Industry & Policy Affairs of the Boeing Company and Chairman of the ITAA Telecommunication Policy Committee Jonathan Jacob Nadler of Squire, Sanders & Dempsey, LLP, representing ITAA; and Mark Uncapher, Senior Vice President of Internet Commerce & Communications Division of ITAA.

The issues addressed in this meeting are outlined fully in the attached written *ex parte* presentation, which was provided during the meetings. Subsequent to the meeting, the attached ex parte letter dated October 17, 2003 that had been previously submitted for CC Dockets 02-33 and 01-337 (Proposed Deregulation of ILEC-Provided Broadband Telecommunications Services and Elimination of

Information Technology Association of America
INTERNET *Commerce & Communications* DIVISION
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muncapher@itaa.org; http://www.itaa.org/isec.htm

ILEC Information Services Unbundling Requirement) was sent to the meeting participants.

In accordance with Section 1.1206, an original and two copies of this letter and attachment are being submitted to the Secretary's office on this date. Please address any questions regarding this matter to me.

Sincerely,

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Mark Uncapher

Enclosure

cc:
Jane Jackson,
Bill Maher
Carol Mattey,
Brent Olson, all of the WCB
Kim Ambler, Boeing, on behalf of the ITAA Telecommunication Committee
Jonathan Jacob Nadler, Squire Sanders & Dempsey

The Commission Should Preserve the Competitive, Unregulated Broadband Information Services Market

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May 22, 2003

I. Introduction

- ITAA is the principal trade association of the computer software and services industry

  -- 500 U.S. members, from multinational corporations to locally based enterprises

  -- Many of ITAA's members are Information Service Providers, which remain critically dependent on the ILECs for broadband and narrowband telecommunications services

  -- For thirty years, ITAA has participated in Commission proceedings, including all aspects of the *Computer Inquiries*, governing ILECs' obligations to provide the telecommunications services that ISPs require to serve their subscribers

- Overview of the Presentation

  -- Today's competitive ISP market provides significant consumer benefits

  -- ILECs remain dominant in the provision of wholesale broadband telecommunications services that ISPs use to serve their mass-market customers

  -- The Commission should retain the ILECs' *Computer II* unbundling obligations

  -- The Commission cannot, and should not, require ISPs to make direct payments to the Universal Service Fund

II. Today's Competitive ISP Market Provides Significant Consumer Benefits

- ISPs are more than fungible "conduits" to information

- ISPs compete based on a variety of factors, such as: price, service level, applications support, proprietary applications, premises equipment, security,. and privacy

- Competition among ISPs has led to lower prices, increased quality, and significant innovation; it has also ensured that consumers have unimpeded access to on-line information

III. The ILECs Remain Dominant in the Provision of Wholesale Broadband Telecommunications Services That ISPs Use to Serve Mass-Market Customers

- ILECs remain dominant in the market for "wholesale mass-market broadband telecommunications services"

- CLEC "intra-modal" competition does not effectively constrain the ILECs' ability to discriminate in the provision of mass-market broadband telecommunications services; indeed, competitive provision of DSL will become even more difficult as a result of the Commission's decision to eliminate the line-sharing requirement

- Cable systems do not provide effective "inter-modal" competition; while some cable systems are "partnering" with a handful of selected ISPs, *no* cable system has offered to make broadband capacity generally available to any requesting ISP

IV. The Commission Should Retain the ILECs' *Computer II* Unbundling Obligations, While Eliminating Unnecessary Regulations

- Elimination of the *Computer II* unbundling obligation would have a significant adverse impact

  -- The ILECs could drive non-affiliated broadband ISPs from the market by refusing to provide broadband telecommunications – or by providing service at higher prices, or on far less favorable terms, than those enjoyed by the ILECs' information service operations

  -- This would result in a broadband duopoly consisting of an ILEC-affiliated and a cable-affiliated broadband ISP

  -- This, in turn, would increase demands for government regulation designed to prevent ISPs from restricting consumers' access to on-line content

- Concerns about broadband facilities deployment and "regulatory symmetry" do not provide a basis for eliminating the *Computer II* unbundling rule

- -- The "unbundling" required by the *Computer II* Rules is fundamentally different from the "unbundling" required by the *Local Competition Order;* the *Computer II* Rules merely require the ILECs to offer telecom services that they have chosen to provide to their ISP affiliates to non-affiliated ISPs on just, reasonable, and non-discriminatory terms

- -- The fact that cable system operators are not legally obligated to provide unbundled transmission service on request – and because, in practice, they do not do so – makes it *more* important to ensure that the ILECs fulfill their common carrier obligations

- The Commission should eliminate ineffective rules, while linking the removal of effective competitive safeguards to the availability of competitive alternatives to the ILECs' wholesale broadband transmission services

  - -- The Open Network Architecture and the CEI Plan regime serve no useful purpose; they should be eliminated

  - -- The Commission should retain effective safeguards – such as the *Computer II* unbundling requirement – until the ILECs can demonstrate that ISPs have a meaningful choice of broadband transmission service providers

V. The Commission Cannot and Should Not Require ISPs to Make Direct Payments to the Universal Service Fund

- Because ISPs use – rather than "provide" – telecommunications, the Commission does not have legal authority to require ISPs to make direct payments to the USF

- Concerns about "sufficiency" or "competitive neutrality" do not provide a basis to require ISPs to make direct payments to the USF

  - -- Adoption of a connection-based assessment methodology will address concerns about the sufficiency of the USF

  - -- Because ISPs do not compete against telecommunications carriers in the provision of telecommunications, the current regime is fully consistent with competitive neutrality

- Treating ISPs like carriers for *universal service* purposes would undermine the Commission's long-standing policy of treating ISPs as end users for *access charge* purposes.