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FILED ELECTRONICALLY

August 6, 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* Presentations
CC Docket Nos. 02-33, 98-10, 95-20; 01-337

Dear Ms. Dortch:

On August 5, 2003, Donna N. Lampert and the undersigned, both of Lampert & O'Connor P.C. on behalf of EarthLink, Inc., met with Christopher Libertelli, Legal Advisor to Chairman Powell, to discuss the above-referenced proceedings. In addition, the undersigned also had a brief telephone conversation with Mr. Libertelli after the meeting.

EarthLink discussed its positions described in documents previously filed in the above-referenced dockets. EarthLink explained that a Title II approach to regulation of Bell Operating Company (BOC) wholesale advanced services transmission services, including a nondiscrimination obligation, would best ensure competition in information services. EarthLink explained that a Title I approach would not ensure that independent ISPs have access to equivalent underlying transmission as the BOC ISP (or a preferred ISP), would raise serious legal and enforcement uncertainty, and would not provide any effective continuing regulatory oversight for a myriad of unreasonable or discriminatory BOC actions that may occur in the future. EarthLink emphasized that any set of static performance metrics based on today's technology under Title I adopted without a nondiscrimination principle would have even less utility for ISP competition as broadband networks develop.

EarthLink explained that it negotiates agreements with BOCs, including the recent RBAN agreement with BellSouth, and reviews BOC tariffed offerings, and that the availability of Title II rights ensure reasonable arrangements for broadband transport. EarthLink further stressed that the conduct of the BOCs sometimes requires a Title II backstop to prevent

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unreasonable practices. EarthLink also explained that recent BOC submittals defining a “demarc” point between unregulated and regulated portions of their network are based on a misperception of *Computer Inquiry* requirements. BOC information services are today unregulated, but the transmission components of the BOC network remain subject to Title II regulation. There are no separate “regulated” and “unregulated” networks.

EarthLink also emphasized that the ISP access rule proposed by EarthLink and others would streamline current Title II regulations and place more emphasis on enforcement. Particular current obligations could be waived, if in the public interest, especially under an enforcement-centric model. Finally, EarthLink also objected to a “sunset” of Title II access obligations.

Pursuant to the Commission’s Rules, one copy of this Notice is being provided to you electronically for inclusion in the public record 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.