



Filed Electronically

September 22, 2003

Ex Parte

Marlene Dortch
Secretary
Federal Communications Commission
The Portals, TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation -- CHOICE Coalition Emergency Petition for Stay
CC Dkt. No.s 01-338, 96-98, 98-147

Dear Ms. Dortch:

Attached please find one copy of an *ex parte* letter sent this day to Chairman Michael K. Powell. In accordance with the Commission's *ex parte* rules, one copy of the attached letter and this cover letter are filed electronically herewith in the above referenced docket.

Should you have any questions regarding this matter, please feel free to contact me.

Respectfully submitted,

/s/

Dave Baker
Vice President, Law and Public Policy
EarthLink, Inc.



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Ex Parte

Hon. Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation -- CHOICE Coalition Emergency Petition for Stay
CC Dkt. No.s 01-338, 96-98, 98-147

Dear Chairman Powell:

EarthLink submits this letter in support of the petition by the Coalition for High-Speed Online Internet Competition and Enterprise ("CHOICE Coalition") to stay limited portions of the Commission's Triennial Review Order related to line sharing. Together with CHOICE Coalition member Covad Communications, EarthLink provides DSL-based broadband Internet access to hundreds of thousands of Americans and we continue to add more customers to our networks each day. Any disruption in the ability of CLECs like Covad to purchase line-shared loops from the incumbent LECs would impact EarthLink's existing customer base, and would threaten our ability to serve the residential, home office and small business DSL users that rely on our services. Consumers benefit from widespread broadband deployment, and we are concerned that, absent the stay requested by the CHOICE Coalition, consumers will be irreparably harmed.

The CHOICE Coalition has asked the Commission to stay the mandatory 25% increase in the price of line-shared loops that is set to take effect on the effective date of the order (i.e., October 2, 2003). The CHOICE Coalition also asks the Commission to lift its current restrictions preventing competitive DSL providers from adding new line-shared customers after the first year of the order. EarthLink strongly believes that both requests are reasonable, as the CHOICE Coalition has asked for only the limited relief needed to protect its rights. Allowing these two portions of the line sharing decision to go into effect before outstanding line splitting operational issues are addressed would cause irreparable harm to consumers. EarthLink believes that timing the stay to expire upon resolution of operational impediments to line splitting, as suggested by the CHOICE Coalition, would not only mitigate the potential for harm to the



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CHOICE members from implementation of the line sharing portions of the order, but would also leave the incumbent LECs themselves in control of the expiration of the stay.

In sum, EarthLink believes the CHOICE Coalition has articulated a compelling and reasonable basis on which the Commission should grant their stay request. In the absence of such a stay, the Commission risks imposing disruption on residential broadband consumers, particularly in rural areas. EarthLink respectfully requests that the Commission grant the CHOICE Coalition stay request on an expedited basis.

In accordance with the Commission's *ex parte* rules, one copy of this letter is filed today electronically in each of the above-referenced dockets.

Respectfully submitted,

/s/

Dave Baker
Vice President, Law and Public Policy
EarthLink, Inc.

CC: Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Christopher Libertelli
Matthew Brill
Daniel Gonzalez
Jessica Rosenworcel
Lisa Zaina
William Maher
Carol Matthey
Michelle Carey
Thomas Navin
Brent Olson