

 **Lampert & O'Connor, P.C.**

1750 K Street NW  
Suite 600  
Washington, DC 20006

Mark J. O'Connor  
oconnor@l-olaw.com

Tel 202/887-6230  
Fax 202/887-6231

August 5, 2004

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Ex Parte* Presentation – Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket Nos. 01-338, 96-98, 98-147); Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services (CC Docket No. 01-337)

Dear Ms. Dortch:

On August 4, 2004, Dave Baker, EarthLink's Vice President of Law and Public Policy, Brinton Young, EarthLink's Executive Vice President of Strategic Planning, and the undersigned met with Mr. Christopher Libertelli, Senior Legal Advisor to Chairman Powell, Mr. Aaron Goldberger, and Mr. Cory Jackson of the FCC regarding the above-referenced dockets. During this conversation, EarthLink argued that the Commission should include line sharing in any FCC "stand still" order of existing arrangements for unbundled network elements. Further, EarthLink discussed the merits of its pending Petition for Reconsideration regarding line sharing, and the recent statements in the press regarding the willingness of some Commissioners to reconsider the line sharing UNE decision. EarthLink discussed its intention to seek interim relief from the October 3<sup>rd</sup> line sharing deadline, and the applicable standard under the D.C. Circuit's *Holiday Tours* case. EarthLink also discussed how line sharing is part of a long term strategic plan to transition to facilities-based UNE-L competition with incumbent LECs for a variety of consumer services using next-generation DSL equipment. EarthLink briefly stated the importance of hot-cuts for facilities-based competition. Finally, EarthLink explained that it has worked with a number of potential alternative broadband platforms, including broadband over powerline, wireless, and unlicensed wireless, but the economics or the technical constraints show that these alternatives are not yet commercially feasible.

Pursuant to the Commission's rules, one copy of this memorandum is being filed electronically in each of the above-referenced dockets for inclusion in the public record. Please do not hesitate to call me if you have any questions.

Respectfully submitted,

/s/

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