

 **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

October 14, 2004

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

Re: *Ex Parte* Presentation – Review of the Section 251 Unbundling Obligations of Incumbent LECs (CC Docket Nos. 01-338, 96-98, 98-147); Unbundled Access to Network Elements (WC Docket 04-313)

Dear Ms. Dortch:

On October 13, 2004, Dave Baker, EarthLink's Vice President of Law and Public Policy, and the undersigned met with the following Wireline Competition Bureau staff regarding the above-referenced dockets: Thomas Navin; Jeremy Miller; Ian Dillner; Carol Simpson; Cathy Zima; Tim Stelzig; Gail Cohen; Pam Arluk; Chris Canter; and Brad Koerner. During the meeting, EarthLink discussed its pending petition for reconsideration to reinstate the line sharing UNE and its October 4, 2004 comments in the above-referenced dockets. EarthLink discussed the fact that the Commission has already determined that competitive LECs are impaired in access to the copper loop, and so it follows that there is impairment of the high-frequency portion of that loop, as well. In addition, EarthLink emphasized that line sharing benefits consumers by supporting ISP competition, and that line splitting was not a practical option under either UNE-P or UNE-L. EarthLink also argued that the *USTA I* and *II* decisions do not mandate findings of broadband competition in the market, and that the court does not require a cost-benefit analysis where competition is not shown. EarthLink also noted the lack of broadband competition with respect to small businesses which are typically not served by cable facilities.

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.