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September 30, 2005

***Via Electronic Delivery***

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

Re: Notice of *Ex Parte* Presentation – WC Dkt. 05-65, *In the Matter of SBC/AT&T Applications for Approval of Transfer of Control*; WC Dkt. 05-75, *In the Matter of Verizon/MCI Applications for Approval of Transfer of Control*

Dear Ms. Dortch:

On September 29, 2005, Christopher Putala, Executive Vice President, Public Policy, EarthLink, Inc., and Amy Mehlman, on behalf of EarthLink, and the undersigned met separately with Russell Hanser, Acting Legal Advisor to Commissioner Abernathy, and Michelle Carey, Legal Advisor to Chairman Martin, regarding the above captioned proceedings. The attached document and the White Paper previously filed on September 26, 2005, were discussed.

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 contact me directly if you have any questions.

Respectfully submitted,

/s/

Donna N. Lampert  
Counsel for EarthLink, Inc.

cc: (via electronic mail)

Russell Hanser ([Russ.Hanser@fcc.gov](mailto:Russ.Hanser@fcc.gov))  
Michelle Carey ([Michelle.Carey@fcc.gov](mailto:Michelle.Carey@fcc.gov))

Ex Parte of EarthLink, Inc.  
September 29, 2005

## Proposed Merger Conditions and Remedies

WC Docket 05-65

In the Matter of SBC/AT&T Applications for Approval of  
Transfer of Control  
and

WC Docket 05-75

In the Matter of Verizon/MCI Applications for Approval  
of Transfer of Control

## Proposed Merger Conditions and Remedies

- Consumer Decisions: Stand-Alone DSL
- Consumer Freedoms: Non-Interference
- Compliance & Enforcement

## Let Consumers Decide: Stand-Alone DSL

- Wholesale Stand-Alone DSL
  - Merging parties must offer in-region wholesale stand-alone DSL
  - Wholesale must include term/volume discounts, adequate OSS, no usage restrictions, contract pricing
- Retail Stand-Alone DSL
  - Merging parties must offer in-region retail stand-alone (with resale) without restrictions
  - Merging parties must accept customer Letters of Authorization
- Stand-Alone DSL Pricing
  - Rate must be just and reasonable

### Rationale for Proposed Condition

- Promotes consumer choice and redundancy -- VoIP and other IP-enabled Services available as actual and potential competitive alternatives for retail consumers
- Condition will remedy decreased wholesale broadband competition due to elimination of AT&T and MCI

## Stand-Alone DSL: Background

- Stand-Alone DSL is technically feasible
  - Qwest currently offers unrestricted stand-alone DSL
  - Verizon already offers type of “stand-alone” service
- Verizon’s service is complex and subject to implementation issues
  - Service restrictions are unnecessarily complex and consumers have no way of knowing if restrictions apply
    - Ex: Service restricted if CLEC doesn’t offer free line-sharing
    - Ex: Service restricted if “dispatch of Company personnel is required”
    - See Verizon Tariff FCC No. 20 § 5.1.2.D
  - Consumers encounter difficulties ordering service
- SBC fails to offer any stand-alone service at all

## Consumer Freedoms: Non-Interference

- Merging parties must not interfere with, degrade or block traffic traversing their networks
- Merging parties must abide by “net neutrality” principles
  - Merging parties must designate compliance officer responsible for service provider complaints and provide quarterly reports describing any issues and resolution

### Rationale for Proposed Condition

- Promotes consumer freedom to access full range of services
- Condition will remedy increased opportunity for discrimination and preferential treatment due to vertical integration resulting in preferences by merging companies in favor of their own services and traffic
- Condition will remedy negative effects of decreased wholesale broadband competition due to elimination of AT&T and MCI

## Compliance and Enforcement

- Violations subject to expedited process and pre-set damages
  - Afford “injunctive” relief for alleged violations pending resolution
- Penalties paid to harmed parties in addition to fines
- Merged parties must have a senior company Compliance Officer
  - Compliance officer will submit publicly available reports
- Merged parties will retain an independent auditor and issue publicly available reports

### Rationale for Proposal

- Enforcement penalties and mechanism will help deter violations
- Remedies require effective monitoring and enforcement if they are to redress public interest harms
- Enforcement should seek to restore competitive balance due to violations of merger conditions