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Via Electronic Delivery

Ms. Marlene Dortch, Secretary
Federal Communications Commission
The Portals, TW-A325
445 12th 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 October 20, 2005, Christopher Putala, Executive Vice President, Public Policy, EarthLink, Inc., Amy Mehlman, on behalf of EarthLink, and the undersigned met with Jim Bird, of the Office of General Counsel; and Gail Cohen, Bill Dever, Donald Stockdale, and Pam Megna (by telephone) of the Wireline Competition Bureau, regarding the above captioned proceedings. The attached documents from the California Public Utilities Commission and the attached written presentation 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)

Jim Bird (Jim.Bird@fcc.gov)
Gail Cohen (Gail.Cohen@fcc.gov)
Bill Dever (William.Dever@fcc.gov)
Donald Stockdale (Donald.Stockdale@fcc.gov)
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ACCESS TO STAND-ALONE DSL – LAST OFFER ARBITRATION

When negotiations fail to produce an acceptable set of price, terms and conditions for provision of wholesale stand-alone DSL, a party may choose to submit a dispute to commercial arbitration in accordance with the following procedures:

- An aggrieved party may submit a dispute with SBC and/or Verizon (herein “SBC/Verizon”) over the terms and conditions of the provisioning of wholesale stand-alone DSL in each SBC/Verizon region.
- The aggrieved party will provide notice of the party’s intent to arbitrate to SBC/Verizon. Upon receipt of notice, parties will enter into a “*cooling off period*” of 15 days. During this *cooling off period*, negotiations between parties shall continue.
- At the expiration of the *cooling off period*, the aggrieved party may file a formal demand for arbitration with American Arbitration Association (“AAA”) which shall include the aggrieved party’s “final offer.”
- Upon receipt of the formal demand for arbitration, SBC/Verizon will be notified that it is required to participate in the arbitration proceeding and will be required to submit its “final offer” within 2 business days of receiving the aggrieved party’s formal filing.
- The final offers shall be in the form of a contract for the provision of wholesale stand-alone DSL. The final offers may not include any provision for any other service other than wholesale stand-alone DSL.
- The arbitration will be decided by a single arbitrator under the expedited procedures of commercial arbitration rules, then in effect, of the AAA, excluding the rules relating to large, complex cases.
- The arbitrator must choose the final offer of the party which most closely represents commercially reasonable rates, terms and/or conditions.
- To determine commercial reasonableness, the arbitrator may request materials from the parties including:
 - Current contracts between the aggrieved party or other customers and SBC/Verizon, including any SBC/Verizon affiliates.
 - Evidence of the relative value of the SBC/Verizon wholesale stand-alone DSL service compared to other services.
 - Evidence of the values or costs of stand-alone DSL, including changes to same.
 - Evidence of rates, terms and conditions for comparable services (DSL that requires the customer to purchase telephone service or retail stand-alone DSL services).
- If the arbitrator finds that one party’s conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other party’s costs and expenses (including attorney fees) against the offending party.
- Each party pays its own fees and the parties split the arbitrator’s fees and costs equally.
- Judgment upon an award entered by the arbitrator may be entered by any court having competent jurisdiction over the matter.
- A party aggrieved by the arbitrator’s award may file with the Commission a petition seeking de novo review of the award within 30 days of the date the award is published.
- The Commission shall retain authority to review the award; in doing so, it Commission will examine the same evidence that was presented to the arbitrator and will choose the final offer of the party that is most closely based on commercially reasonable rates, terms and/or conditions.