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June 8, 2006

***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: *Ex Parte Presentation* – CC Dkt. 02-33, *Appropriate Framework  
for Broadband Access to Internet over Wireline Facilities*

Dear Ms. Dortch:

On June 7, 2006, the undersigned sent the attached letter to Thomas Navin, Chief, Wireline Competition Bureau. Pursuant to the Commission's rules, one copy of this memorandum is being filed electronically in the above-referenced docket for inclusion in the public record.

Please do not hesitate to contact me directly if you have any questions.

Respectfully submitted,

/s/ *Mark J. O'Connor*

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

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June 7, 2006

*Via Facsimile*

Mr. Thomas Navin  
Chief, Wireline Competition Bureau  
Federal Communications Commission  
The Portals, TW-A325  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Ex Parte* Presentation – CC Dkt No. 02-33, *Appropriate Framework for  
Broadband Access to Internet Over Wireline Facilities*

Dear Mr. Navin:

As the Commission implements the next phase of the *Wireline Broadband Order* concerning the federal universal service contributions, EarthLink urges the Commission to do so in a manner that is competitively neutral to all broadband Internet Service Providers (“ISPs”), including those that obtain broadband transmission from the incumbent LECs. As you know, in the *Wireline Broadband Order*, the FCC adopted a 270-day interim period after which federal universal service contributions would no longer be required from wireline broadband Internet access providers.<sup>1</sup> EarthLink requests the FCC clarify that after this 270-day period, which ends in August 2006, federal universal service contributions shall also no longer be required on DSL services that are “grandfathered” pursuant to the *Wireline Broadband Order’s* one year transition period or on DSL services that are provided to third parties pursuant to private contractual arrangements as contemplated, such as to EarthLink and other ISPs.

Absent such a clarification, the FCC could inadvertently tilt the broadband information services arena by effectively affording a competitive advantage to incumbent facilities-based providers of retail DSL-based Internet access information services in the amount of the federal universal service contribution. Currently, incumbent local exchange carriers (“ILECs”) contribute to the federal universal service fund for the transmission component of their own DSL-based retail Internet access services and for the transmission component of the DSL service

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<sup>1</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd. 14853, at ¶¶ 112-113, (2005), petitions for review pending, *Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3<sup>rd</sup> Cir., filed Oct. 26, 2005) (“*Wireline Broadband Order*”).

**■ Lampert & O'Connor, P.C.**

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sold to independent ISPs that utilize DSL as an input for their retail broadband Internet access services, with the latter universal service fees assessed as a pass-through on the bills of independent ISPs. Certainly, it is contrary to robust broadband competition if only independent ISPs and their customers are required to incur federal universal service costs for DSL transmission inputs while ILECs are exempt from such costs.

Pursuant to the Commission's *ex parte* rules, two copies of this filing will be included in the public record of the above-referenced docket. Please do not hesitate to contact me directly if you have any questions.

Respectfully submitted,

*/s/ Mark J. O'Connor*

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

cc: *(via facsimile)*

Daniel Gonzalez  
Michelle Carey  
Scott Deutchman  
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