

Shareholder Proposal on Internet Freedom of Expression and Privacy

**Scheduled for Votes
At 2009 Annual Meetings of:**

**EarthLink, Inc. (NASDAQ: ELNK)
CenturyTel, Inc. (NYSE: CTL)**



**New York City Pension Funds
Office of the New York City Comptroller**



Trillium Asset Management Corporation



Open Media and Information Companies Initiative

Shareholder Proposal on Internet Freedom of Expression and Privacy

Vote "Yes"

"As more and more speech migrates online, to blogs and social-networking sites and the like, the ultimate power to decide who has an opportunity to be heard, and what we may say, lies increasingly with Internet service providers, search engines and other Internet companies..."

Jeffrey Rosen
George Washington University School of Law
New York Times Sunday Magazine 11/28/2008

Proposal Filed With:

- **EarthLink (NASDAQ: ELNK)**, which provides nationwide Internet access and related value-added services to more than three million individual and business customers;
- **CenturyTel (NYSE: CTL)**, which, upon completion of a pending merger with Embarq Corporation (anticipated in the second quarter of 2009), will operate in 33 states, with nearly eight million access lines and approximately two million broadband Internet customers; and

Proposal Filed By: New York City Pension Funds and Trillium Asset Management

Proposal Background: The Internet is becoming the defining infrastructure of our economy and society in the 21st century. Internet Service Providers (ISPs) are gatekeepers to this infrastructure: providing access, managing traffic, insuring communication, and forging rules that shape, enable and limit the public's Internet use. With more than 70% of Americans now using the Internet on a daily basis, a fundamental concern is the effect ISPs' network management practices have on public expectations of privacy and freedom of expression on the Internet.

A recent survey by the Consumer Reports National Research Center found 72% of Americans are concerned that their online behaviors are being tracked and profiled by companies; 53% of Americans are uncomfortable with companies using their email content or browsing history to send relevant ads; and 54% of Americans are uncomfortable with third parties collecting information about their online behavior.

In the past two years, there have also been multiple instances where a lack of clarity on ISP network management practices has led to violations of freedom of expression. This stems from the fact that ISPs are exempt from the "common carriage" regulations that require traditional telecoms to be neutral handlers of transmissions over their lines, granting ISPs tremendous powers of discretion over the information flows that pass through their networks, both wired and wireless. In this regard they function more like media firms than telecoms.

Network management practices have come under public scrutiny by consumer and civil liberties groups and regulatory authorities, including committees of the U.S. Congress, the Federal Communications Commission and the Federal Trade Commission. Internet network management is a significant public policy issue; failure to fully and publicly address this issue poses potential competitive, legal and reputational harm to the Companies.

The Proposal: "Shareholders request the board issue a report by October 2009, excluding proprietary and confidential information, examining the effects of the company's Internet network management practices in the context of the significant public policy concerns regarding the public's expectations of privacy and freedom of expression on the Internet."

Argument for a “Yes” Vote

Internet Service Providers (ISPs) manage the information flows across their networks through a variety of means. Our concern focuses on practices whereby consumers are prevented or hindered from accessing or publishing certain information on the Internet, or whereby companies gain and exploit personally identifiable information about consumers.

Investors are concerned about ISP practices

Enormous public attention has been focused in recent years on the Internet filtering practices of countries with repressive governments. Indeed, a multi-stakeholder dialogue among investors, civil society groups and some companies – notably Yahoo!, Microsoft and Google – resulted in the 2008 launch of the Global Network Initiative, an organization whose aim is to encourage the adoption of principles and implementation guidelines affecting freedom of expression and privacy on the Internet. The Global Network Initiative Principles are based on internationally recognized laws and standards for human rights, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights .

Not a single U.S. ISP has agreed to join the Global Network Initiative or endorse its principles. Their reluctance may reflect an ongoing unwillingness to engage with users of the Internet on critical matters affecting freedom of expression and privacy. Across the board, U.S. ISPs’ managements are tight-lipped about what, if any, policies they’ve developed in this regard; if there are such policies, they have been developed and continue to be held in secret.

The disturbing prospect is that the ISPs are employing arbitrary Internet network management practices on an *ad hoc* basis – with multiple documented incidents of illegitimate practices that constitute censorship and invasion of privacy.

ISPs Are Managing Their Networks in the Shadows

This shareholder proposal has its origins in a blatant example of interference with freedom of expression, when AT&T censored a 2007 webcast by the rock group Pearl Jam which contained politically pointed but not obscene lyrics. When confronted, AT&T blamed an

overzealous sub-contractor but admitted to a “handful” of similar incidents. Trillium attempted to engage AT&T in dialogue, but the company has consistently refused to make public its policies regarding censorship.

Only a few months after the AT&T incident, Verizon Wireless denied a request by NARAL Pro-Choice America, the abortion rights group, to use the company’s network for a text-messaging program for individuals who had agreed to receive the messages. Verizon said the subject of the text messages was too “controversial.” Following a *New York Times* story on the incident, Verizon permitted the campaign, saying its earlier decision had been based on “an incorrect interpretation of a dusty internal policy.” Verizon continues to assert its right to decide what text messages are permissible but has yet to disclose on what grounds such decisions will be made.

ISP Practices Are Attracting Congressional and Regulatory Scrutiny

In 2008, one of the companies addressed by the current shareholder proposal –CenturyTel – joined other ISPs as the subjects of national controversy and targets of a major Congressional investigation. The company had entered into partnerships with an online advertising company, NebuAd, which allowed for targeted advertising to customers based on which Web sites the customers liked to visit. Importantly, customers were required to “opt-out” of a program in which many were not aware they were enrolled.

Rep. Mike Doyle (D -PA) said the Nebuad practice of Internet monitoring without subscriber permission "goes against everything the country's been founded on." Subcommittee Chairman Ed Markey (D- MA) suggested the business model was, without opt-in, flatly illegal. "We need to have remedial legal courses for some corporate general counsels," Markey said. Other experts noted that the practices embraced violated Internet Engineering Task Force (IETF) standards that created today’s Internet. The Congressional investigation and public outcry ultimately forced an end to the Nebuad program, but not before considerable damage to the reputations of the ISPs involved.

ISPs Internet network management practices are understandably technical and complicated, which is why even well-intentioned initiatives may sometimes deprive some citizens of their rights.

In June 2008, for example, New York State Attorney General Andrew Cuomo asked major Internet Service Providers – including EarthLink - to clean up their servers and block access to Usenet groups that are spreading child pornography. Usenet is the pre-Web home to some 100,000 discussion groups, only a small fraction of which contain pornography. Indeed, the N.Y. Attorney General's office said it found child pornography on only 88 of the 100,000-plus Usenet groups.

Yet a number of Internet Service Providers indicated that to varying degrees they had stopped, or would stop, offering customers access to tens of thousands of Usenet discussion areas, including those dealing with politics, cooking, the U.S. military and French society. Even some involved with the issue of child pornography expressed concern about over-reaching by the ISPs. Larry Magid, a member of the board of directors of the National Center for Missing & Exploited Children, wrote that he was troubled by the “free speech” aspects of the ISP actions because “the vast majority of the material” in the Usenet newsgroups “has nothing to do with child pornography.”

ISP network management issues are moving to the front page

As the growth of digital media accelerates – with new electronic devices, the growing popularity of Internet video and gaming, and the subsequent increased demand for Internet bandwidth – consumer privacy and freedom of expression will increasingly be front-page issues, commanding shareholder attention.

One of the most widely publicized cases in this regard involved Comcast, the largest cable operator, which last summer employed a new but widely deployed technology – Deep Packet Inspection – as an Internet network management practice. The Comcast case came to light only after the Associated Press reported that its own tests indicated Comcast “actively interferes” with attempts by some high-speed Internet subscribers to share files on peer-to-peer networks. Comcast's interference apparently was both surreptitious and disguised to prevent user detection.

In August 2008, the Federal Communications Commission voted to punish Comcast for violating agency principles that guarantee customers open access to the Internet. FCC Chairman Kevin Martin said Comcast's network management amounted to “looking inside its subscribers' communications, blocking that communication when it

uses a particular application regardless of whether there is congestion on the network, hiding what it is doing by making consumers think the problem is their own, and lying about it to the public...”

In coming months, the Recording Industry Association of America is expected to ask Internet Service Providers to help block the illegal copying of copyrighted material via the Internet. Without making any judgment regarding the validity of the recording industry's objectives, it's almost certain that attempts to “filter” the Internet traffic of millions of Americans is likely to engender additional controversy, if not litigation involving the ISPs..

Meaningful transparency with respect for privacy and freedom of speech is essential to the companies' futures

As long as Internet network management practices are developed in secret, Americans can expect that their worst fears may be realized, with persistent challenges to their freedom of expression and privacy. ISPs are managing and discussing Internet networks in a manner that provides the public with little or no meaningful understanding of how their privacy and freedom of speech interests are protected. The risks associated with this approach are untenable. It is time for companies to stop hiding behind the legal jargon in their privacy policies and “terms of use” and, instead, address these issues directly.

We ask the Internet Service Provider managements to provide greater transparency and accountability for their network management practices because doing so is in the corporations' and their shareholders' best interests. Failure to provide greater transparency can lead to high-profile scrutiny and action by Congress and regulatory agencies as well as potential litigation by consumer or civil rights groups. Weakened consumer confidence in the companies and their Internet services can damage brand reputation, thereby potentially harming share value.

More Information:

Patrick Doherty, New York City Comptroller's Office, 212-669-2651, pdohert@comptroller.nyc.gov;

Jonas Kron, Trillium Asset Management, 971-222-3366, jkron@trilliuminvest.com;

Michael Connor, Open Media and Information Companies Initiative, 212-537-9401, mconnor@openmic.org

APPENDIX A
TEXT OF SHAREHOLDER PROPOSAL

**Report on Network Management Practices,
Public Expectations of Privacy and Freedom of Expression on the Internet**

The Internet is becoming the defining infrastructure of our economy and society in the 21st century. Its potential to open markets for commerce, venues for cultural expression and modalities of civic engagement is without historic parallel.

Internet Service Providers (ISPs) are gatekeepers to this infrastructure: providing access, managing traffic, insuring communication, and forging rules that shape, enable and limit the public's Internet use.

As such, ISPs have a weighty responsibility in devising network management practices. ISPs must give far-ranging thought to how these practices serve to promote--or inhibit--the public's participation in the economy and in civil society.

Of fundamental concern is the effect ISPs' network management practices have on public expectations of privacy and freedom of expression on the Internet.

Whereas:

- More than 211 million Americans--70% of the population--use the Internet;
- The Internet serves as an engine of opportunity for social, cultural and civic participation in society;
- 46% of Americans have used the internet, e-mail or text messaging to participate in the 2008 political process;
- The Internet yields significant economic benefits to society, with online U.S. retailing revenues – only one gauge of e-commerce - exceeding \$200 billion in 2008;
- The Internet plays a critical role in addressing societal challenges such as provision of health care, with over 8 million Americans looking for health information online daily;
- 72% of Americans are concerned that their online behaviors are being tracked and profiled by companies;
- 53% of Americans are uncomfortable with companies using their email content or browsing history to send relevant ads;
- 54% of Americans are uncomfortable with third parties collecting information about their online behavior;

- Our Company provides Internet access to a very large number of subscribers and is considered a leading ISP;
- Our Company's network management practices have come under public scrutiny by consumer and civil liberties groups, regulatory authorities and shareholders.
- Class action lawsuits in several states are challenging the propriety of ISPs' network management practices;
- Internet network management is a significant public policy issue; failure to fully and publicly address this issue poses potential competitive, legal and reputational harm to our Company;
- Any perceived compromise by ISPs of public expectations of privacy and freedom of expression on the Internet could have a chilling effect on the use of the Internet and detrimental effects on society.

Therefore, be it resolved, that shareholders request the board issue a report by October 2009, excluding proprietary and confidential information, examining the effects of the company's Internet network management practices in the context of the significant public policy concerns regarding the public's expectations of privacy and freedom of expression on the Internet.

Supporting Statement

One example of an issue to be examined could be the social and political effects of collecting and selling personal information to third-parties, including information companies such as First Advantage and Equifax.