April 21, 1998

Mr. Leland C. Thoburn
Vice President – Business Affairs
Earthlink Network, Inc.
3100 New York Drive
Pasadena, CA 91107

Dear Mr. Thoburn:

The purpose of this letter is to inform you that, effective immediately, Microsoft is waiving its rights under certain provisions in certain contracts between you and Microsoft. The affected contracts are the *Internet-Sign Up Wizard Referral and Microsoft® Internet Explorer License and Distribution Agreement* and the *Microsoft® BackOffice® Small Business Server Internet Referral Service Agreement* (collectively, the "Agreements"). Microsoft is taking this step in order to set aside any remaining questions regarding the business relationship between Microsoft and those ISPs to whom Microsoft has directed customers through its referral server programs.

Unfortunately, certain provisions of the Agreements have become the focus of unwarranted attention by third parties seeking to further their own agendas. As you will see from the attachment to this letter, the particular provisions in question represent only a small part of our overall contract; however, we are voluntarily setting aside those provisions, in order to eliminate controversy and confusion. This will enable both of us to focus on strengthening our overall working relationship without distraction.

The attached Unilateral Waiver of Rights is binding upon Microsoft without any further action on your part. If you would like, however, Microsoft will work with you to incorporate those changes into a formal amendment to your Agreement.

As you know, the purpose of the referral server program, and the focus of our Agreement with you, is to assure a convenient and satisfying Internet access experience for our mutual customers. We thank you for your contributions to making that goal a reality. Microsoft looks forward to continuing our joint efforts, to the ultimate benefit of our common customers.

If you have any questions or need any additional information, please contact your local account manager.

Sincerely,

Cameron Myhrvold
Vice-President
Internet Customer Unit
Microsoft Corporation

MS98 0106631
CONFIDENTIAL

04/30/98

UNILATERAL WAIVER OF RIGHTS

This Unilateral Waiver of Rights, which shall be effective upon delivery, constitutes a binding and unilateral waiver by Microsoft of certain rights or obligations that may be contained in any *Internet-Sign Up Wizard Referral and Microsoft® Internet Explorer License and Distribution Agreement* or any *Microsoft® BackOffice® Small Business Server Internet Referral Service Agreement* executed on or before April 10, 1998. With regard to such agreements, Microsoft hereby formally commits that it will not enforce any contract term in any manner inconsistent with the following paragraphs:

1. If and to the extent any Agreement includes provisions concerning minimum distribution volumes or percentages of Internet Explorer browser technology, Microsoft unilaterally waives its rights under those provisions.

2. If and to the extent any Agreement includes provisions concerning discussion, promotion, or advertising of Internet Explorer browser technology, Microsoft unilaterally waives its rights under such provisions, and requires only that the ISP discuss, promote, or advertise Internet Explorer browser technology in a manner that is, considered in its entirety, no less prominent and favorable than the ISP's discussion, promotion, or advertising of competing browser technology.

3. If and to the extent any Agreement includes provisions concerning use, distribution or advertising of Internet Explorer browser technology as the ISP's "standard," "default" or "recommended" web browsing technology, Microsoft unilaterally waives its rights under those provisions.

4. If and to the extent any Agreement includes provisions for discounts against ISP Referral Fees, (a) the maximum dollar value of such discounts shall henceforth be accorded to the ISP, (b) all performance obligations related to qualifying for such discounts are hereby waived, and (c) all text describing qualifications is hereby deleted.

This Unilateral Waiver of Rights shall be effective without further action of any sort by the signatories to the agreements described above.

Cameron Myhrvold
Vice-President
Internet Customer Unit
Microsoft Corporation

MS98 0106632
CONFIDENTIAL

04/30/98