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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a	)	CC Docket No. 98-146
Reasonable and Timely Fashion, and	)	
Possible Steps to Accelerate Such	)	
Deployment Pursuant to Section 706 of	)	
the Telecommunications Act of 1996	)	

REPLY COMMENTS OF THE WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.

The Wireless Communications Association International, Inc. ("WCA"), by its attorneys, hereby submits its reply comments in response to the Commission's *Notice of Inquiry* ("*NOI*") in the above-referenced proceeding.

Though they differ in their details, the initial round of comments in this proceeding reveals several broad themes: (1) wireless networks represent a cost-efficient, near-term solution to the "last mile" problem that currently is stalling wider deployment of advanced telecommunications services;[1] (2) the goal of more rapid, widespread deployment of advanced

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[1] *See, e.g.*, Comments of The Wireless Communications Association International, Inc., CC Docket No. 98-146, at 3-6 (filed Sept. 14, 1998) [the "WCA Comments"]; Comments of the Personal Communications Industry Association, CC Docket No. 98-146, at 19-21 (filed Sept. 14, 1998) [the "PCIA Comments"]; Comments of the Rural Telecommunications Group, CC Docket No. 98-146, at 12-13 (filed Sept. 14, 1998) [the "RTG Comments"]; Comments of Teligent, Inc., CC Docket No. 98-146, at 2-4 (filed Sept. 14, 1998) [the "Teligent Comments]; Comments of Paging Network, Inc., CC Docket No. 98-146, at 3-4 (filed Sept. 14, 1998); Comments of Winstar Communications, Inc., CC Docket No. 98-146, at 2-7 (filed Sept. 14, 1998) [the "Winstar Comments"]; Comments of the Cellular

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telecommunications services is best achieved by deregulatory policies that give competitors as much freedom as possible to develop and market new services in response to consumer demand;[2] and (3) consistent with the deregulatory course it appears to be charting in the *NOI*, the Commission should exercise its forbearance authority wherever possible to eliminate unnecessary regulatory burdens on providers of advanced telecommunications services who lack market power.[3] As reflected in its own initial comments, WCA is in substantial agreement with each of these principles, and urges that they become the touchstone of any further Commission proceedings directed toward implementation of Section 706 of the Telecommunications Act of 1996 (the "1996 Act").

In addition, a number of providers (fixed wireless and otherwise) have noted that they still do not have full and fair access to customers in the MDU environment and, like WCA,

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Telecommunications Industry Association, CC Docket No. 98-146, at 1-5 (filed Sept. 14, 1998); Comments of Northern Telecom, Inc., CC Docket No. 98-146, at 7-10 (filed Sept. 14, 1998); Comments of Skybridge, L.L.C., CC Docket No. 98-146, at 5-7 (filed Sept. 14, 1998); Comments of Teledesic LLC, CC Docket No. 98-146, at 3-4 (filed Sept. 14, 1998).

[2] *See, e.g,* WCA Comments at 6; PCIA Comments at 28-35; Comments of Ameritech, CC Docket No. 98-146, at 3-5 (filed Sept. 14, 1998); Comments of Bell Atlantic, CC Docket No. 98-146, at 8 (filed Sept. 14, 1998); Comments of MediaOne Group, Inc., CC Docket No. 98-146, at 12 (filed Sept. 14, 1998); Comments of Cincinnati Bell Telephone Company, CC Docket No. 98-146, at 16-17 (filed Sept. 14, 1998); Comments of the National Cable Television Association, CC Docket No. 98-146, at 20-25 (filed Sept. 14, 1998) [the "NCTA Comments"]; Comments of MCI Communications Corporation, CC Docket No. 98-146, at 15 (filed Sept. 14, 1998); Comments of Comcast Corporation, CC Docket No. 98-146 at 6-8 (filed Sept. 14, 1998) [the "Comcast Comments"].

[3] *See, e.g.,* WCA Comments at 7-12; Comments of the Commercial Internet Exchange Association, CC Docket No. 98-146, at 16-17 (filed Sept. 14, 1998); Bell Communications Research, CC Docket No. 98-146, at 3 (filed Sept. 14, 1998); Comcast Comments at 17-19; RTG Comments at 14; Comments of Time Warner Cable, CC Docket No. 98-146, at 7-9 (filed Sept. 14, 1998).

have called on the Commission to further revise its inside wiring and over-the-air antenna preemption rules to eliminate anticompetitive incumbent behavior and ensure that the rules will apply where a provider is offering advanced telecommunications services.[4] Chairman Kennard recently reemphasized the significance of these "access to premises" issues:

> Fixed wireless providers need rooftop access to apartments and office buildings to place their antennas. They also need access to inside wiring and riser cables to reach their customers. This year's FCC report on CMRS competition noted that wireless providers encounter problems gaining access. You need to help us to identify the nature and extent of these problems so we can be part of the solution.[5]

WCA agrees. Indeed, now that the Commission has adopted a comprehensive regulatory framework under which fixed wireless broadband providers may use MDS and ITFS frequencies to provide two-way services, it is more imperative than ever that the Commission eliminate flaws in its inside wiring and over-the-air antenna preemption rules that have anticompetitive effects on the fixed wireless industry.[6] Accordingly, consistent with the Chairman's call to action, WCA once again urges the Commission to correct the flaws in its

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[4] *See, e.g.*, WCA Comments at 23-30; Comments of Allegiance Telecom, Inc., CC Docket No. 98-146, at 7-11 (filed Sept. 14, 1998); Comments of the Association for Local Telecommunications Services, CC Docket No. 98-146, at 19-21 (filed Sept. 14, 1998) [the "ALTS Comments"]; PCIA Comments at 39-40; Teligent Comments at 6-9; Winstar Comments at 11-17; Comments of OpTel, Inc., CC Docket No. 98-146, at 3-7 (filed Sept. 14, 1998).

[5] Remarks by William E. Kennard, Chairman, Federal Communications Commission, to the Personal Communications Industry Association of America, Orlando, Florida (Sept. 23, 1998).

[6] *See Amendment of Parts 21 and 74 to Enhance the Ability of Multipoint Distribution Service and Instructional Fixed Television Service licensees to Engage in Fixed Two-Way Transmissions*, MM Docket No. 97-217, FCC 98-231 (rel. Sept. 25, 1998).

inside wiring rules as recommended in WCA's initial comments, and to extend the federal preemption of antenna restrictions contained in Section 1.4000 of the Commission's Rules to all wireless services.[7] With regard to the latter, WCA agrees with ALTS that the Commission already has sufficient authority under Section 4(i) of the Communications Act of 1934, as amended, to so extend its over-the-air antenna preemption rules.[8]

In addition, it should be noted that in its recent *Order on Reconsideration* with regard to its over-the-air antenna preemption rules, the Commission asserted that the record in CS Docket No. 96-83 did not demonstrate that video programming delivered over the Internet is comparable to that provided by a television broadcast station, and that a fixed wireless broadband antenna that is used to receive Internet access service thus is not entitled to protection under Section 207 of the 1996 Act.[9] Yet in the recent OPP Working Paper on the provision of Internet services by cable television systems, *Internet Over Cable: Defining the Future in Terms of the Past*, it was acknowledged that:

> [A] basic Internet connection permitting a subscriber to visit Web sites put up by third parties may not be comparable to

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[7] WCA Comments at 23-30.

[8] ALTS Comments at 21; *see also* 47 U.S.C. § 154(i) (authorizing the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions"); *North American Telecomm. Ass'n v. FCC*, 772 F.2d 1282, 1292-3 (7th Cir. 1985) [Section 4(i) "empowers the Commission to deal with the unforeseen — even if that means straying a little way beyond the apparent boundaries of the Act — to the extent necessary to regulate effectively those matters already within the boundaries."].

[9] *See Implementation of Section 207 of the Telecommunications Act of 1996 - Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service*, CS Docket No. 96-83, FCC 98-214, at ¶ 56 (rel. Sept. 25, 1998).

> programming provided by a television broadcast station. In contrast, live video images transmitted across the Internet by the technique known as "streaming" video might appear much closer to traditional broadcasting, particularly from the point of view of the subscriber. . . *It is therefore possible to fit cable Internet-based services within the statutory concepts of either "video programming" or "other programming services," depending upon the nature and manner in which the information is provided to the subscriber."*[10]

In other words, the issue of whether video "streamed" over the Internet qualifies as "video programming" under Section 207 remains very ripe for consideration, and WCA thus urges the Commission to reexamine the matter in the near term.

Finally, WCA notes that certain commenting parties, including one cable MSO, have urged the Commission to forbear from applying its unbundling requirements to advanced telecommunications services provided via wireline facilities.[11] As it considers the wisdom of forbearing from imposing unbundling requirements, WCA believes that the following passage from *Internet Over Cable* is of particular relevance to fixed wireless broadband providers:

> Arguably, the unbundling requirements [in the] *Frame Relay Order* should not be imposed on cable operators unless provision of Internet-based services over their integrated cable facilities possess some competitive threat to the ability of other ISPs to reach end users. Most ISPs currently offer Internet access to their subscribers through dial-up connections whereby the subscriber places a local (or in some cases, a toll call) to the

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[10] Esbin, *Internet Over Cable: Defining the Future in Terms of the Past*, OPP Working Paper Series No. 30, at 82-83 (August 1998) [emphasis added].

[11] *See* Ameritech Comments at 3-5, 13; Comments of BellSouth Corporation, CC Docket No. 98-146, at 55-56 (filed Sept. 14, 1998); Cincinnati Bell Comments at 14-16; Comcast Comments at 17-19.

> ISP, and the ISP routes the call to the Internet. *Short of record evidence to the effect that the cable Internet platform currently stands as an essential barrier to ISPs reaching their customers, the better approach would be to forbear from imposing the Computer II regime on cable provided-Internet access services, even if a literal reading of the rule might arguably suggest otherwise.*[12]

Regardless of how the Commission chooses to resolve the unbundling issue for incumbent cable MSOs, it is beyond dispute that fixed wireless broadband providers who lack market power clearly are not an "essential barrier to ISPs reaching their customers," and thus it is appropriate for the Commission to forbear from imposing unbundling requirements on those providers as suggested in *Internet Over Cable*. WCA urges that this concept be included in the Commission's broader agenda for deregulation of advanced telecommunications services.

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[12] *Internet Over Cable* at 96 (emphasis added).

WHEREFORE, WCA requests that the Commission initiate the actions recommended in WCA's initial comments and in these reply comments.

Respectfully submitted,

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ASSOCIATION INTERNATIONAL, INC.

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