Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	)))	CC Docket No. 95-20
	)	
1998 Biennial Regulatory Review: Review of C*omputer III* and ONA Safeguards and Requirements	)))	CC Docket No. 98-10

COMMENTS OF VERIZON

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COMMENTS OF VERIZON[1]

I. Introduction and Summary

Much has occurred in the past one and one-half decades that makes the Open Network Architecture ("ONA") requirements not just unnecessary and unduly burdensome but in certain respects affirmatively harmful to competition and the public interest. Information services have grown to a $300 billion industry, populated by some of the largest corporations in the world. While the former regional Bell operating companies have contributed to the robust competition, they are not the market leaders, much less dominant providers. Broadband telecommunications services, which are used to deliver some information services, have taken off, led by cable television companies and their cable modem services. The 1996 Act has furthered local competition throughout the country, with literally thousands of new entrants competing with incumbents for business and residential customers.

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[1] The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc. identified in the attached list.

As a result, the conditions which caused the Commission to adopt strict nonstructural regulations in 1986 have evaporated. The Bell companies' incentives today are to sell as many telecommunications services as possible to the host of information service providers that populate the market and to invest in new innovative technologies. In this environment it would not even be possible, much less in their business interest, for the Bell companies to engage in anticompetitive practices. By eliminating unnecessary regulatory restrictions, the Commission will help provide the needed encouragement for the Bell companies to develop innovative competitive telecommunications and information services that will benefit the public without in any way harming competition.

Today, the ONA restrictions serve only to place the former Bell companies at a competitive disadvantage compared to cable operators and others who operate without restriction. These restrictions increase costs and deter new investment in innovative technologies and services without serving any public interest need. Therefore, just as the Commission found in 1986 that the costs of structural separation outweighed any possible benefits, it should now conclude that the costs of the non-structural remedies also exceed any benefit to the public.

Whatever the merits of the ONA rules in the context of narrowband services, the Commission should not reflexively extend any remaining requirements to emerging broadband services. While the Commission's non-structural requirements were premised on the notion that the Bell companies retained some measure of bottleneck control in the narrowband world, this is not even arguably the case in the broadband world. The rapidly-growing market for broadband services is dominated by cable modem providers, with satellite and fixed wireless-based services growing rapidly as well. These competing providers have never been subject to any of the ONA rules and operate in a largely deregulated environment. In the broadband business, it is the former Bell companies who are the new entrants. Only by allowing them to compete on the same basis as these other providers will the Commission promote the kind of innovation and investment that will further development of the broadband telecommunications capabilities that the public demands.

Instead, the Commission should follow the model used successfully in the CMRS context and allow these emerging services to develop free of regulatory burdens that were designed for the narrowband world. Just as in the case of CMRS, this course will best promote investment and widespread deployment of innovative new broadband services to the benefit of consumers.

II. ONA Requirements Should Be Largely Lifted As Unnecessary.

It has now been fifteen years since the Commission eliminated structural separation for provision by the former Bell companies of enhanced or information services and replaced it with ONA nonstructural requirements.[2] *See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order,* 104 F.C.C. 2d 958 (1986) ("Report and Order").[3] The Commission correctly determined then that "the inefficiencies and other costs to the public associated with structural separation significantly outweigh the corresponding costs." *Id.* at & 46.

On each subsequent occasion the Commission re-examined the issue, it came to the same conclusion. For example, on reconsideration the following year, the Commission reiterated that

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[2] Verizon will use the term "information services" to refer to both enhanced services under the Commission's rules and information services as defined in the 1996 Act.

[3] Structural separation applied only to the former Bell companies and AT&T. ONA requirements initially applied only to the former Bell companies, but they were later extended to GTE, which is now part of Verizon. *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, 9 FCC Rcd 4922 (1994). In this filing, Verizon refers to the companies subject to ONA as the "former Bell companies."

"structural separation imposes direct costs on … the BOCs from the duplication of facilities and personnel, the limitations on joint marketing, and the inability to take advantage of scope economies from the commonality of inputs, such as technology and expertise, that these firms could use to produce different services." *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Memorandum Opinion and Order on Reconsideration*, 2 FCC Rcd 3035, & 25 (1987). Likewise, upon remand from the Ninth Circuit, it examined the issue *de novo* and concluded that "our experience with structural separation shows that it inhibits BOC provision of enhanced services." *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571, & 8 (1991).

The past decade and a half has shown how wise a decision eliminating structural separation was. As the Commission recently found,

> we now have no doubt that consumers who choose to purchase CPE or enhanced services on a stand-alone basis may do so from a myriad of suppliers. Coupled with this wide choice of CPE and enhanced services suppliers is now a wide choice of interexchange telecommunications carriers and a growing choice of local exchange carriers.

Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket Nos. 96-61 and 98-183, FCC 01-98, & 10 (rel. Mar. 30, 2001) ("Bundling Order").

Statistical evidence supports that finding as well. By 1994, the information services industry had already accounted for $135.9 billion in revenues, and the Commerce Department termed it "among the fastest growing sectors of the economy." United States Department of Commerce, *U.S. Industrial Outlook 1994* at 25-1. Today, that figure is $300 billion and continues to grow rapidly. The McGraw-Hill Companies and U.S. Department of Commerce/International Trade Administration, *U.S. Industry & Trade Outlook 2000* at Chap. 26, Chart, "Revenue Growth of Information Services" (2000) ("2000 Outlook"). Clearly, removal of structural separation has not prevented robust growth – indeed, it has encouraged it. One segment of that market alone, Internet Service Providers ("ISPs"), accounted for nearly $24 billion in revenue in 2000 and is expected to grow to over $80 billion in 2005. S. Harris, *Internet Service Provider Market Forecast and Analysis, 2000-2005*, International Data Corp. (Dec. 2000) ("Harris").

In most segments of the information services market, the former Bell companies are not even participants. But, in those in which they participate, their entry has produced significant positive benefits. For example, the Bell companies have been effective in delivering previously unavailable services such as network-based voice messaging services to the mass market – producing billions of dollars worth of consumer welfare gains. As the Commission itself found when it first initiated this proceeding, voice messaging subscribership ballooned from 60,000 in 1990 to more than five million five years later. *Notice of Proposed Rulemaking*, 10 FCC Rcd 8360, & 37 (1995). At the same time that output increased exponentially, voice messaging prices dropped precipitously, from nearly $30 to $8 per month. *See* J.A. Hausman and T.J. Tardiff, "Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services," at 9 and 14, April 6, 1995, appended to Comments of Bell Atlantic and NYNEX (filed Apr. 7, 1995). And, despite that growth, no Bell company dominates the field, and today 65 percent of American households own answering machines that compete directly with voice messaging services. 2000 Outlook at 31-12. Likewise, while affiliates of the former Bell companies are among the 5,000 ISPs operating in the United States today, *id*. at 28-22, none is listed among the ten largest. *Id.* at 28-23.

When it replaced structural separation with non-structural requirements, the Commission sought to provide assurance that the former Bell companies could not use their supposed local bottleneck for traditional narrowband telephony to monopolize the emerging information service business and prevent fair competition. To that end, it imposed "only those restrictions on the participation of AT&T and the BOCs in the enhanced services marketplace that best promote such competition and protect ratepayers of regulated services from improperly being assessed those costs of these competitive activities." Report and Order at & 77.

That should still be the goal today. Rapidly increasing competition for local telecommunications services, thanks to the market-opening provisions of the 1996 Act, have made the nonstructural requirements unnecessary to protect competition. Particularly in the data services market, technologies other than traditional wireline services are creating an increasing array of new services. With the increased availability of data services delivered via CMRS, fixed wireless, satellite, and other systems, any bottleneck the former Bell companies may arguably have held in their local territories in 1986 is rapidly disappearing. If a service that an information service provider wants cannot be obtained from an Bell company, or if the price is too high, competing providers will quickly step in to fill the void.

Recent experience has shown that information service providers are receiving those capabilities they need without relying on ONA requirements. While information service providers initially sought hundreds of unbundled capabilities during the initial years of ONA in the late 1980s, those requests have since dwindled to nothing. Verizon, for example, has received no new complete requests for ONA services since 1995 and only a handful in the past decade.[4] And there is no evidence that competition has been harmed. Along with the vast expansion of competitive information services and underlying telecommunications offerings, the Commission has not received a single formal complaint of any former Bell company's failure to meet ONA obligations. Quarterly reports have uniformly shown comparable installation and maintenance intervals for affiliated and non-affiliated information service providers. Costs have been properly allocated, so that unregulated enhanced services have not been subsidized by telecommunications services. Under these circumstances, the market conditions that caused the Commission to impose nonstructural requirements in 1986 no longer exist today.

Certainly the Commission should not even consider returning to the dark days of structural separation – which served only to deter the introduction of new services and increase costs. Instead, it should allow the Bell companies' information services to participate in the marketplace in the same way as their competitors by removing the remaining ONA requirements that it imposed in 1986. This is consistent with Chairman Powell's recent testimony to Congress, where he stated that structural separation would "induce another extraordinary period of uncertainty." TR Daily (Apr. 6, 2001), quoting FCC Chairman Michael K. Powell: Agenda and Plans for Reform of the FCC: Hearing Before the House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, 107th Cong. (Mar. 29, 2001) ("March 29 Testimony").

The history prior to 1986 shows that structural separation served only to increase costs, create inefficiency, retard innovation, and deprive the public of new services. As Bell Atlantic showed at an earlier phase of this proceeding, for voice messaging, the expense alone of moving

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[4] Although Verizon received a request in 2000 for a service that cannot technically be provided in the central offices for which it was requested, that request failed to meet the Commission's criteria for a complete ONA service request.

its operations into a separate subsidiary would be at least $100 million, with capital costs at least $30 million more. *See* Comments of Bell Atlantic at 8 (filed Mar. 27, 1998) ("1998 Comments"), citing Declaration of Richard J. McCusker, Jr. at & 8, which was appended to that filing. This would increase Verizon's costs, and ultimately the prices it would have to charge, by some 25% for residential customers and 20% for business customers. *Id*.

Moreover, by sharply raising costs, structural separation would deter investment in new information service technologies and services. Actual market experience shows this to have been the case in the past. While the technology for mass market voice messaging was available in the early 1980s, the former Bell companies could not economically begin rolling out those services until the Commission lifted structural separation in 1987.[5] It has been estimated that the public welfare loss from this delay in the introduction of network-based voice messaging services caused by structural separation was $1.27 billion. Jerry A. Hausman, "Valuing the Effect of Regulation on New Services in Telecommunications," BROOKINGS PAPERS ON ECONOMICS, MICROECONOMICS 1997 at 14. That article appeared in Att. A of Bell Atlantic's 1998 Comments. By preventing or delaying the introduction of new information services by the Bell companies, a return to structural separation would be likely to produce similar losses in consumer welfare.[6] Therefore, just as the Commission saw no reason to extend the section 272(f)(2) sunset date for the structural separation requirement that applied to interLATA information services, there is no basis whatever for turning back the clock 15 years and reimposing structural separation for intraLATA information services. *See Request for Extension*

[5] The need for approval of comparably efficient interconnection plans further delayed deployment until late 1988 and 1989.

of the Sunset Date of the Structural, Nondiscrimination, and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Information Services, 15 FCC Rcd 3267 (2000). As Chairman Powell recently pointed out, "congress specifically opted not to take th[e] route" of structural separation, and it is not for the Commission to second-guess that decision." "Powell: FCC Not Scoping Out Issue-Oriented Merger Conditions," WASHINGTON TELECOM. NEWSWIRE (Apr. 5, 1001).

Nor is there any basis for imposing other new regulatory burdens on the former Bell companies. In particular, there is no justification for adding information service providers to the entities that may obtain unbundled network elements under section 251 of the Act. To the contrary, doing so would contravene the express policy choice made by Congress in the 1996 Act. Section 251(c) imposes on incumbent local exchange carriers the duty to provide unbundled network elements "to any requesting *telecommunications carrier* for the provision of a *telecommunications service*." 47 U.S.C. э 251(c) (emphasis added). The Act therefore places two explicit limitations on the scope of the incumbents' unbundling obligations – one based on the identity of the firm seeking access to network elements, and a second based on the use to which such elements can be put.[7] Information service providers fall outside both of these limitations because, as the Commission has concluded, they are not telecommunications carriers and they do not provide telecommunications services. *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶ 39 (1998) ("Report to Congress"). The

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[6] By comparison, the ten year delay in the introduction of cellular telephone service caused by delays in the regulatory licensing process produced even larger consumer welfare losses – to the tune of $16.7-24.3 billion per year. *See id*. at 9.

[7] *See also* 47 U.S.C. § 251(d)(2)(B) (elements are to be made available only when "the failure to provide access to such network elements would impair the ability of the

telecommunications carrier seeking access to provide the services that it seeks to offer") (emphasis added).

Commission should not by rule override the express policy choice that Congress made to limit the unbundling requirement to competing carriers.

Rather than consider imposing additional counter-productive burdens, the Commission should focus on removing existing restrictions. Indeed, one of the central thrusts of the 1996 Telecommunications Act is to eliminate unnecessary regulatory burdens. Section 10 affirmatively requires the Commission to forbear from applying any regulation that is unnecessary to ensure that rates for telecommunications services are reasonable or to protect consumers, and that are not in the public interest. 47 U.S.C. э 160. Likewise, Section 11(b) requires the Commission to eliminate "any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. э 161(b).

These statutory obligations should direct the policy choices here. As Chairman Powell pointed out to Congress, the Commission should "harness competition and market forces to drive efficient change and resist the temptation, as regulators, to meld markets in out image or the image of any particular industry player." And as he also recognized, the Act places the burden on the Commission to "validate regulations that constrain market activity that are necessary to protect consumers, or … eliminate them." March 29 Testimony. As shown above, the ONA requirements are unnecessary and should be eliminated.

In particular, the requirement that the Bell companies provide basic telecommunications services to information service providers only under tariffed rates, terms, and conditions should be eliminated. Giving the Bell companies the same flexibility as their competitors will produce significant benefits. It will permit the kind of innovative compensation mechanism that prevails on the Internet and, by so doing, will promote the development of innovative service offerings. As Chairman Powell properly told Congress, "[i]f the infrastructure is never invented, is never deployed, or lacks economic viability we will not even see a glimmer of the bright future we envision." March 29 Testimony.

No other information service provider is subject to constraints that are comparable to those imposed on the Bell companies. For example, cable companies' Internet affiliates are free to obtain cable modem services for resale at negotiated rates. Satellite, long distance, and CMRS providers are unconstrained in the services and rates that they may negotiate with information service providers, and all may offer bundled packages at reduced rates without restriction. Only the former Bell companies, who are minority players in all information service markets, are saddled with the need to tariff each and every "basic" offering used by their information services and to offer all such services on a common carrier basis. Therefore, where state and federal regulators allow contract tariffs or otherwise deregulate basic offerings, the Bell companies' information services should be free to subscribe to those services without triggering a tariffing obligation on the part of the former Bell company.

At a minimum, the Commission should also remove the host of burdensome filing requirements imposed fifteen years ago:[8]

> CEI Plans: As the Commission correctly pointed out in 1998, "CEI plans were always intended to be an interim measure," *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 6040, & 61 (1998) ("Further Notice"). Fifteen years is far longer than any useful "interim" period, and these plans no longer serve any useful purpose. Although the Commission no longer requires prior approval, the time and effort needed to prepare and post such plans – a burden not shared by competitors – has no corresponding benefit. *See Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, Report and Order,* 14 FCC Rcd 4289, & 12 (1999).

[8] The revisions adopted here should apply equally to information services and to payphones. Under the Act, payphone nonstructural requirements should track those adopted in Computer Inquiry III, 47 U.S.C. э 276(b)(1)(C), including any revisions to those rules that are adopted here.

A CEI plan consists of a description of the former Bell company's enhanced service – a service which it offers in a robust competitive market – and the underlying basic telecommunications services that it plans to use. Otherwise, it consists of largely boilerplate language that is common to nearly all such plans. All of the telecommunications services are either tariffed at the federal or state level, in which case their rates, terms and conditions are a matter of public record, or they are sufficiently competitive that they have been, or should be, deregulated. In the latter event, enhanced service competitors should have all of the services they need available from multiple providers and need not rely on the former Bell company. In either case, the CEI plan simply tips the former Bell company's hand about how it intends to provide its competitive unregulated services and gives its competitors an unfair competitive advantage.

In the past, the need for prior approval has allowed competitors to use the regulatory process to delay competition. For example, when Bell Atlantic sought to provide enhanced Internet access services in the former NYNEX states following the merger, competitors' opposition filings delayed approval for well over a year, until the Commission eliminated the prior approval requirement and mooted the oppositions. Significantly, since the Commission placed on opponents the burden of showing non-compliance, no complaint has been filed on this or any other CEI plan.

The requirement to prepare CEI plans has outlived its usefulness, and it should be stricken.

Annual Reports: These massive documents, which run to hundreds of pages and take dozens of person-hours to prepare, contain no useful information. They include detailed information about deployment of each ONA service on a LATA-by-LATA basis, even though those services have had few takers. They include detailed information about new requests for ONA services, which are few and far between, and deployment of common channel signaling, integrated services digital networks, and intelligent network capabilities – technologies which, while relevant in the 1980s, are not of concern today – and in providing billing information and calling number identification – capabilities which are also not now at issue. The former Bell companies also must provide information about joint industry activities to implement new ONA services and uniformity, efforts which have largely been discontinued. In short, the annual reports provide no relevant or valuable information and should be scrapped.

Semi-Annual Reports: These voluminous reports include a matrix of all ONA services, references to the federal and state tariffs in which they are offered, paper and diskette copies of data on tariffs, and the ONA User Guide. To Verizon's knowledge, these reports are rarely, if ever, used. Nonaffiliated enhanced service providers have access to all available telecommunications services from all carriers to offer their enhanced services, whether or not the telecommunications offerings are termed "ONA services," and affiliated enhanced service providers should have the same right. Requiring detailed reporting of those services that happened to be defined as ONA services serves no purpose, and these reports should also be eliminated.

Quarterly Reports: These reports detail the installation and maintenance intervals for each ONA service. They are time-consuming to prepare, because they involve tracking which orders came from affiliated enhanced service providers and which from other customers. This difficulty, in itself, shows that the former Bell companies do not discriminate, because they would not ascertain whether or not an installation or maintenance order is from an affiliate but for the reporting requirement. In any event, since their inception, Verizon is unaware of any complaint by any competitor that any former Bell company is discriminating in the installation or maintenance of underlying telecommunications services, and there is no reason for the Commission to continue to impose the reporting burden. All carriers remain subject to the non-discrimination provisions of section 202(a) of the Act, so the Commission has a clear remedy in the event of a valid discrimination complaint.

III. The Commission Should Not Extend the ONA Rules to Broadband.

While the record strongly suggests that the Commission should eliminate its ONA rules in their entirety, as shown above, there can be no doubt that the Commission should not reflexively extend these rules to cover broadband services. As the Commission has repeatedly concluded, broadband is an open and competitive market – one in which cable operators, and not local telephone companies, are dominant – and information-service providers have a wide range of competitive options when purchasing basic services. The ONA requirements, which were predicated on the bygone notion that a single firm controls access to basic services, are therefore wholly inapposite to broadband. Extending these burdensome and costly regulations to broadband would therefore do nothing but stifle innovation and investment, harming consumers by slowing the development of new broadband services.

The existing ONA rules were designed for the narrowband world and were premised on the notion that the Bell companies retained some measure of bottleneck control over narrowband telecommunications services. Indeed, the Commission has expressly stated that it adopted these rules to prevent the former Bell companies from using their control over "the *local exchange network* and the provision of basic services . . . to engage in anticompetitive behavior against ISPs that must obtain basic network services from the BOCs in order to provide their information service offerings," *Further Notice* at ¶ 43 (emphasis added); *see also id.* at ¶ 9 ("One of the Commission's main objectives in the *Computer III* and ONA proceedings has been to . . . prevent[] the BOCs from using their local exchange market power to engage in improper cost allocation and unlawful discrimination against" providers of information services). While this is no longer a serious concern even in narrowband, the Commission's own statements confirm what the marketplace evidence undeniably proves: The Bell companies have no bottleneck control over the networks used to deliver broadband access, and ISPs need not "obtain basic services from BOCs" to reach their customers. Rather, the nascent broadband access market includes many different providers using different technologies to deliver high-speed transmission service. And in this market, cable operators, not telephone companies, are dominant. Indeed, in this market, it is the telephone companies who are the new entrants.

The Commission has considered the question of whether broadband access providers control a bottleneck facility many times before, and has repeatedly concluded that the market is open and competitive. Most recently, in deciding to sunset the prohibition against incumbent LECs and cable operators owning Local Multipoint Distribution Service spectrum in areas overlapping their service territories, the Commission was called upon to ascertain whether "the broadband market is robust and competitive." *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Establish Rules and Policies for Local Multipoint Distribution Service and Fixed Satellite Services***,** 15 FCC Rcd 11857, ¶ 17 (2000). The Commission's answer was unequivocal: "The record before us, which shows a continuing increase in consumer broadband choices within and among the various delivery technologies – xDSL, cable modems, satellite, fixed wireless, and mobile wireless, suggests that no group of firms or technology will likely be able to dominate the provision of broadband services." *Id*. at & 19. Likewise, in approving the AT&T-MediaOne merger, the Commission found that cable operators, despite having a commanding share of the residential broadband market, face "significant actual and potential competition from . . . alternative broadband providers." *Applications for Consent to Transfer Control of MediaOne to AT&T*, 15 FCC Rcd 9816, ¶ 116 (2000) (AT&T/MediaOne Order**).**

These statements are consistent with a long history of Commission findings on the state of competition in the residential broadband access market. In its first Report mandated by section 706 of the Act, the Commission concluded that the "preconditions for monopoly appear absent" in the broadband access market, and that "there are, or likely soon will be, a large number of actual participants and potential entrants." *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, 14 FCC Rcd 2398, ¶ 48 (1999). As a result, the Commission concluded that it does "not foresee the consumer market for broadband becoming a sustained monopoly or duopoly." *Id*. at & 52. Similarly, in a report outlining the state of broadband competition, the Cable Services Bureau identified a "nascent residential broadband market containing a number of existing and potential competitors," with "[c]able, telephone, wireless, and satellite companies . . . rushing to provide broadband services to the home." Deborah A. Lathen, *Broadband Today: A Staff Report to William E. Kennard on Industry Monitoring Sessions Convened by the Cable Services Bureau*, October 1999, at 47. The Bureau ultimately concluded that "competition" will give "consumers . . . a wide selection of broadband features, capabilities, and pricing from which to choose." *Id*. The Commission has therefore made it clear, on numerous occasions, that the market for broadband transport services is open and competitive.

Given the Commission's repeated findings, there can be no doubt that there are a number of alternatives to telephone company-provided broadband transmission services. The first, and most obvious source, is cable operators, who control a commanding share of the broadband market and have upgraded networks reaching the great majority of American homes. The Commission has found that cable operators have an incentive "for unaffiliated ISPs to gain direct access to provide broadband services over the cable infrastructure," AT&T/MediaOne Order at & 127, and every major cable operator has indicated that it plans to offer transmission services to unaffiliated ISPs.[9] Moreover, ISPs seeking broadband transport can purchase service from incumbent LECs offering DSL, from DLECs offering DSL over a mix of their own and ILEC facilities, from satellite operators who are now providing two-way broadband service, and from fixed wireless providers who are rapidly building out their broadband networks.

Because the Commission concluded that the broadband access market is competitive, there is no reason for it to extend any remaining ONA requirements to broadband, particularly

[9] Both AOL Time Warner and AT&T have committed to the Commission that they will sell cable-delivered broadband access to unaffiliated ISPs. *See Application for Consent to Transfer Control of Time Warner to AOL*, CS Docket No. 00-30, FCC 01-12, ¶ 126 (rel. Jan. 22, 2001); AT&T/MediaOne Order at ¶ 120. Likewise, in their comments to the Commission in a separate proceeding, both Cox and Comcast indicated that they are planning to offer broadband access services to unaffiliated ISPs. *See Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Gen. Docket No. 00-185, Comments of Cox Communications, Inc., at 5 (filed Dec. 1, 2000) ("Cox is committed to seeking relationships on commercially reasonable terms and conditions with other ISPs to provide additional high-speed data services over its cable networks"); Comments of Comcast Corp. at 37 (filed Dec. 1, 2000) ("Comcast also expects to forge business relationships with other Internet service providers, and is already taking steps necessary to prepare for such developments").

given that local telephone companies are new entrants seeking to challenge the dominant position of cable operators. The Commission's NPRM in this very proceeding explains why in clear terms:

> BOCs are unable to engage successfully in discrimination and cost misallocation to the extent that competing ISPs have alternative sources of access to basic services. Stated differently, when other telecommunications carriers, such as interexchange carriers or *cable service providers*, compete with the BOCs in providing basic services to ISPs, the BOCs are less able to engage successfully in discrimination and cost misallocation because they risk losing business from their ISP customers for basic services to these competing telecommunications carriers.

Further Notice at ¶ 49 (emphasis added). The Commission has for years refused to regulate the broadband offerings of cable operators, concluding that the marketplace will give even the dominant providers of broadband services adequate incentive to offer their services in a way that maximizes consumer welfare. *See, e.g.*, AT&T-MediaOne Order at ¶ 120. Facing even greater competition than cable operators, local telephone companies likewise have every incentive to make their broadband access services ubiquitously available to all providers of enhanced services *without regulation*. And it is precisely because of the absence of regulation that the local telephone company would be able to negotiate innovative arrangements with information service providers such as those that prevail on the Internet. As the Commission itself recently recognized, in "a competitive market, carriers have an incentive to offer bundles or stand-alone offerings that a customer needs or the customer will switch to another carrier." Bundling Order at ¶ 26.

In the case of broadband, the Commission should follow the example it set when deregulating mobile wireless services – an example that provides concrete marketplace proof that allowing the nascent broadband market to develop free from regulation will generate enormous benefits for consumers. Notwithstanding the fact that, at the time the Commission made its decision to deregulate wireless services, "the cellular services marketplace" was not "fully competitive," the Commission found that "[c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates." *Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order*, 9 FCC Rcd 1411, ¶ 174 (1994) ("Wireless Deregulation Order"). The Commission's rationale was a simple one: "in a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service set by carriers who lack market power." *Id*. at & 173.[10] As a result of the Commission's deregulatory course, the number of wireless customers has increased seven-fold, and prices have fallen by 33%.[11]

In contrast to this record of success, reflexively extending the ONA requirements to the emerging broadband market would deter innovation and investment, and harm consumers, just as the now-discredited structural separation rules did in narrowband. Prohibiting the former Bell companies from using "basic" services that are not offered under tariff on an unbundled basis deters them from investing in innovation and the introduction of new technology that they would

[10] *See also Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order*, 11 FCC Rcd 20730, ¶ 42 (1996) ("Just as we believe that competition is sufficient to ensure that nondominant interexchange carriers' charges for interstate, domestic, interexchange services are just and reasonable, and not unreasonably discriminatory, and to protect consumers, we believe that competitive forces will ensure that nondominant carriers' non-price terms and conditions are reasonable."); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities, First Report and Order*, 85 F.C.C.2d 1, ¶ 88 (1980) ("firms lacking market power simply cannot rationally price their services in ways which, or impose terms and conditions which, would contravene Section 201(b) and 202(a) of the Act").

[11] *See* Cellular Telecommunications & Internet Association, *CTIA's Semi-Annual Wireless Survey Results*, Charts on Wireless Subscribership & Average Local Monthly Bill, (available at www.wow-com.com/industry/stats) (June 30, 2000) (measuring time-period between 1993 and 2000).

in a open competitive marketplace. Indeed, it is unclear how these "basic service" requirements could even be applied to the new technologies used in broadband services.

In addition, as the Commission has recognized unnecessary "filing and reporting requirements impose[] administrative costs upon carriers" that can "lead to increased rates for consumers" and have "adverse effects on competition." Wireless Deregulation Order at ¶ 177. These losses to consumer welfare are magnified here because only local telephone companies, and no other broadband competitors, are subject to the ONA rules. Extending these lopsided obligations to broadband would therefore place local telephone companies at a greater competitive disadvantage than they already face as a result of existing regulations imposed on the Bell companies and not on cable broadband providers. By making broadband services provided by local telephone companies even less competitive against cable-delivered broadband services, and the services offered by other new entrants, extending ONA to broadband would further discourage LECs from investing in broadband. Competition would suffer – forestalling price reductions – and consumers would lose a key source of new services, just as they did when the Bell companies were subject to structural separation. The Commission should therefore allow this nascent market to develop free from regulation.

IV. Conclusion

Accordingly, the Commission should eliminate the existing ONA requirements, as discussed herein.

Respectfully Submitted,

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ATTACHMENT

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.