

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

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

REPLY COMMENTS OF VERIZON ON THE THIRD NOTICE OF INQUIRY

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CONTENTS

I.	Introduction and Summary	1
II.	The Record Confirms That There Is a Single Broadband Market and That Market Is Competitive	3
III.	Continued Broadband Competition and Deployment Depend On Elimination of Regulatory Requirements Imposed Only on Telephone Companies	4
IV.	Competitor Want To Retain Wholesale Regulation In Order To Preserve Their Anticompetitive Advantage	7
V.	Deregulation, Not Additional Reports, Will Best Meet the Dictates of Section 706	12
VI.	The Commission Should Enforce Section 253 and Not Allow Localities to Regulate Broadband Services	13
VII.	Conclusion	15

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I. Introduction and Summary

The record here shows that there is a consensus among a broad cross-section of interested parties that this country lacks but needs a national broadband policy. That view is shared here by a range of commenters, including technology companies such as Intel, think tanks, consumer groups, as well as many service providers. They agree that the most effective way for the Commission to meet the dictates of section 706 of the 1996 Act and “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” is to adopt a deregulatory policy that relies on the competitive marketplace – rather than one-sided regulatory constraints – to pick winners and losers and provide correct economic incentives to deploy advanced services and to invest in new technologies. The Commission can best carry out that policy by minimizing wholesale regulation of advanced (*e.g.*, broadband)

¹ The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc. listed in Attachment A.

services by telephone companies while deregulating entirely retail broadband services offered by all providers.

Most observers agree that there is a single broadband market, populated by cable providers, telephone companies, satellite providers, and fixed wireless operators who are all competing to provide an array of broadband offerings. Parties recognize that, absent a federal policy of deregulation, existing restrictions will discourage investment and stymie growth of this important market. They also agree that continued asymmetrical regulation is inconsistent with Congressional requirements and with Commission objectives to promote the continued development of a competitive marketplace.

In this environment, it is imperative that the Commission not upset the competitive balance by retaining its existing strict regulation over just one segment – broadband services offered by the telephone companies. As the Commission itself recognized, broadband deployment is slowing. *Third Notice of Inquiry*, FCC 01-223, & 23 (rel. Aug. 10, 2001). And in its opening comments Verizon cited the predictions of many others that telephone company broadband deployment will continue to decline unless the Commission eliminates one-sided regulation. *See Verizon* at 12-18. Without firm and rapid action to remove regulatory burdens that provide disincentives to broader deployment and investment in innovative technologies, the nascent competitive market will soon become one in which the cable companies will dominate and be able to exercise uncontrolled market power to the detriment of the public.

The few parties that argue that existing regulatory disparities should be retained, including the largest cable company and major local and long distance competitors of the telephone companies, continue to try to saddle the telephone companies with regulations in an effort to retain their unfair competitive advantage. Competing local providers appear to want to

retain the present system that forces the incumbent local exchange carriers to bear the risks in the competitive broadband marketplace while they reap the rewards of the unbundling and pricing policy that was designed to open competition in the narrowband voice market. By contrast, those who truly want the broadband market to expand and provide incentives for innovation argue persuasively for less regulatory involvement.

II. The Record Confirms That There Is a Single Broadband Market and That Market Is Competitive.

The comments here confirm what the Commission has already found, that there is a single broadband services market in which telephone, cable, satellite, and fixed wireless providers compete. In its recent report on the deployment of high-speed Internet access services, for example, the Commission defines as the broadband marketplace the services of all providers, using any technology, whose services meet the technical definition of advanced services. *See* Industry Analysis Division, Common Carrier Bureau, *High-Speed Services for Internet Access: Subscriberhip as of December 31, 2000*, at Table 3 (Aug. 2001) (“2001 Broadband Report”).

Here, the industry participants themselves show how each technology constitutes an important part of a single broadband market. *See, e.g.*, AT&T at 3-13 (analyzing the competing role of each of a variety of broadband technologies), OPASTCO at 7 (“Small, rural LECs continue to deploy advanced services in high-cost, difficult to serve rural areas”), NCTA at 8 (showing that by year-end 2002, cable operators will offer broadband services to 90% of their potential subscriber base”), NRTC at 2 (“Today’s Ku-band services are introducing always-on, packet-switched services to rural America”), Hughes at 2 (“Satellite-delivered broadband services are essential to narrowing the ‘Digital Divide’ for rural and consumer broadband users and are uniquely suited to achieve the Commission’s stated policy goal of broadband deployment

that is fast, ubiquitous, competitive, and open”), WCA at 4 (“the Commission must encourage the development of wireless alternative if it is to satisfy its statutory mandate to promote rapid development of broadband service to all Americans”), USTA at 14 (“Carriers are responding to the demand for access to high-speed Internet access, data and advanced telecommunications services on a nationwide basis”), and APTS at 4-5 (“a digitized public television system will make a significant contribution to the deployment of high-speed services to Americans in rural areas and other underserved populations”).

In some geographical areas, all of these technologies compete head-to-head for subscribers. *See* 2001 Broadband Report at Table 8 (showing that half of the Zip Codes in the United States are served by two or more broadband service providers). In other areas, particularly those that are sparsely-populated, wireless technologies (satellite and fixed wireless) rather than terrestrial facilities might be the most cost-effective way of delivering broadband services to individual premises. Although satellite and fixed wireless providers are the newest entrants and currently have a relatively small subscribership, their presence is expected to increase substantially in the years ahead, as the comments of providers of these technologies show. *See* Hughes at 4-5, NRTC at 6-9, WCA at 4-7. And, of the two technologies that currently have the largest number of subscribers, cable modem service enjoys nearly a two-to-one lead over the telephone companies’ asymmetric digital subscriber line (“ADSL”) service. *See* 2001 Broadband Report at Table 1.

III. Continued Broadband Competition and Deployment Depend On Elimination of Regulatory Requirements Imposed Only On Telephone Companies.

At the same time, there is clear concern that broadband will not expand and reach its potential absent implementation of a comprehensive broadband policy by the Commission. The

comments show broad support for eliminating all or most regulation of broadband services as the best way of giving providers the incentives to risk their capital to expand service to additional areas and to invest in new technologies and services. Intel, for example, points out that the broadband market is risky, with providers facing “demand-side risks ... investment risks, competing technologies and companies, as well as regulatory disincentives and uncertainty.” Intel at 11. While the Commission cannot and should not attempt to control demand, investment, or competitive risks, Intel urges elimination of the risks and uncertainties caused by regulation of the telephone companies’ broadband services. It points out that “current regulation is unnecessarily undermining the reasonable and timely deployment of broadband,” *id.* at 13, and argues persuasively that the Commission should “avoid regulatory intervention unless the rulemaking record demonstrates that consumer interests are being threatened through substantial market or competitive failures.” *Id.* at 15.

Likewise, the Progress and Freedom Foundation (“PFF”) concludes that “in order for the marketplace to function properly, broadband providers must not be subject to market-distorting regulations and disparate regulatory regimes.” PFF at 15. It reiterates that “the most conducive environment for encouraging investment in broadband facilities is one in which all providers, regardless of technology, are free from the public utility-style regulatory regime that characterized narrowband voice communications.” *Id.* at 18. The National Association of the Deaf (“NAD”) gives high costs as one reason for the current “modest” penetration of advanced services and concludes that “this cost will only come down if competition increases and if regulatory barriers that impede deployment are removed.” NAD at 1. The Alliance for Public Technology and World Institute on Disability (“APT/WID”) call for “a strong commitment to providing incentives and removing barriers to industry’s rapid deployment of advanced services”

through “a fair regulatory environment to reflect a technology-neutral philosophy.” APT/WID at 8. The National Grange of the Order of Patrons of Husbandry (“Grange”) notes that existing wholesale regulations, which were designed to “promote increased competition ... have the perverse effect of discouraging further investment by major telephone companies.” Grange (pages unnumbered). Likewise it suggests that TELRIC pricing “reduces investment in broadband infrastructure in rural areas and is contrary to the goal of universal service.” *Id.* See also Alcatel at 8 (“TELRIC is a disincentive to ILEC investment in and deployment of advanced services”).

These views are shared by the Telecommunications Industry Association (“TIA”) in a recent letter to President Bush. There, TIA stresses the need for ubiquitous broadband deployment in the near term and proposes a nine-point strategy to achieve that goal. One element of that strategy for modification of Commission regulations “to relieve telecommunications service providers of the so-called federal and state ‘unbundling’ obligations on *new broadband network components* in order to give them the necessary incentives to invest.” Letter dated October 4, 2001 from Matthew J. Flanigan, TIA, to The Honorable George W. Bush at 2 (emphasis in the original).

These comments confirm that existing regulation of the telephone companies’ broadband services is inconsistent with the Commission’s charge in section 706 to promote rapid deployment of broadband services to all Americans. Instead, in order to fulfill its mandate, the Commission should take immediate steps both to reduce regulatory requirements on the telephone companies’ wholesale provision of broadband services to their competitors and on the retail provision of such services to the public by all providers, as Verizon urged in its opening comments. See Verizon at 18-23.

IV. Competitors Want To Retain Wholesale Regulation In Order To Preserve Their Anticompetitive Advantage.

In contrast to this groundswell of evidence that less regulation will best promote deployment of advanced services and new technologies, several competitors of the telephone companies repeat their familiar refrain that the Commission should apply to this already competitive broadband market the same degree of regulation that Congress intended should be directed to narrowband voice markets to help them to *become* competitive.² AT&T, for example, after detailing the competitiveness of the broadband marketplace and showing the variety of available technologies and vendors, nonetheless calls for the Commission to apply all of the regulatory requirements of sections 251 and 252 of the 1996 Act to the telephone companies' broadband services. AT&T at 16-17. Likewise, WorldCom totally ignores the competitive broadband market and focuses instead on only a single segment, ADSL. From this erroneous analysis, WorldCom argues that the telephone companies can exercise monopoly power and that their broadband offerings should be regulated the same way as narrowband voice services. *See* WorldCom at 2, 8.³

Both of these parties ask the Commission to require the telephone companies to unbundle their broadband services and provide the piece-parts to competitors at TELRIC prices. Neither one, however, even attempts to make a case under section 251(d)(2), as they must, that carriers would be impaired in providing their broadband services if they could not obtain unbundled access to those services. It is apparent that they could not make that showing if they tried.

² Verizon demonstrated in its opening comments that Congress adopted the market-opening provisions of the 1996 Act to create competitive markets, not to regulate markets that are already competitive. *See* Verizon at 10.

³ WorldCom also asks the Commission to grant a number of pending petitions asking for even more onerous wholesale regulation. *See* WorldCom at 8-11.

AT&T, the largest cable company, already offers broadband cable modem service widely over its cable systems. In addition, as AT&T itself shows, many other broadband competitors already participate in the broadband marketplace. *See also* 2001 Broadband Report at Table 5, showing that there were 130 separate providers of broadband services operating in the United States in December 2000 using a variety of technologies. The facts, therefore, clearly show no impairment. As the Supreme Court has held, in making an impairment analysis, “[t]he Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent’s network.” *Iowa Utils. Bd.*, 525 U.S. 366, 389 (1999) (emphasis added). Under the Court’s test, therefore, the acknowledged existence of alternative cable, wireless, and satellite technologies to provide advanced services must be taken into account in any impairment analysis. Indeed, any other result would be contrary to Congress’s understanding that various technologies would compete directly against one another in the digital age. Congress specifically concluded that a scheme of what it termed “regulatory apartheid” “no longer makes sense.” 141 Cong. Rec. S7885 (daily ed. June 7, 1995) (statement of Sen. Pressler, Chief Senate Sponsor of the 1996 Act).

The Commission, too, has emphasized that the 1996 Act is “technologically neutral” and that regulations should not discriminate against or burden particular technologies. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 2 (1999); Report to Congress, *Federal- State Joint Board on Universal Service*, 13 FCC Rcd 11501, ¶ 98 (1998) (“We are mindful that, in order to promote equity and efficiency, we should avoid creating regulatory distinctions based purely on technology.”). *See also* Michael K. Powell, *The Great Digital Broadband Migration*, Remarks Before the Progress & Freedom Foundation (Dec. 8, 2000) (Regulators must “work to harmonize regulatory treatment in a

manner consistent with converged technology and markets. . . . Additionally, we must recognize that the Digital Migration involves every segment of the communications industry (*i.e.*, telephone, cable, broadcast, wireless, and satellite) and *none should be examined in isolation.*”) (emphasis added).

Even if the parties could validly claim impairment, which they cannot, both the statute and the Commission’s own decisions make plain that the Commission should not mandate unbundling if that will harm competition and innovation, *even if* a particular carrier or class of carriers would be impaired. *See* 47 U.S.C. § 251(d)(2) (Commission must consider impairment “at a minimum”). In the *UNE Remand Order*, the FCC highlighted the “dynamic and evolving” nature of the “advanced service market” in refusing to unbundle certain advanced services facilities (packet switches) in some instances even where it found that an “impairment” may exist. *UNE Remand Order*, 15 FCC Rcd 3696, ¶¶ 316-317 (1999); *see id.* at ¶ 306 (“In other segments of the market, . . . we conclude that competitors may be impaired We conclude, however, that given the nascent nature of the advanced services marketplace, we will not order unbundling of the packet switching functionality as a general matter”). The Commission found that the interest in avoiding “stifl[ing] burgeoning competition in the advanced services market” and “the Act’s goal of encouraging facilities-based investment and innovation” counseled against unbundling *regardless* of whether an impairment existed. *Id.* at ¶ 316.

The reasons for AT&T’s advocacy of unbundling and TELRIC pricing are particularly transparent, given its own major position in the broadband market and the fact that its broadband services are not subject to any Commission regulation whatsoever. Moreover, AT&T’s own Chairman has provided the most telling reason why such regulation will stifle the competitive market, when he stated that “[n]o company will invest billions of dollars to become a facilities-

based broadband services provider if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others.” Michael Armstrong, AT&T Chairman, *Telecom and Cable TV: Shared Prospects for the Communications Future*, Speech before the Washington Metropolitan Cable Club (Nov. 2, 1998). WorldCom, by joining AT&T in advocating unbundling and TELRIC pricing, shows that it wants just such a free ride.

Sprint, while touting that “[a]dvanced services are clearly being deployed to Americans in a reasonable and timely fashion,” Sprint at 2, still wants the Commission to subject the telephone companies’ broadband services to detailed wholesale regulation. *Id.* at 4-5. Here, again, Sprint wants to avoid effective telephone company competition for its own unregulated broadband services. Among the wholesale requirements on the telephone companies which Sprint (along with WorldCom) seeks is the ability to “virtually collocate line cards in next generation digital loop carriers.” Sprint at 5. *See also* WorldCom at 8-9. But, throughout this proceeding, the equipment vendors have explained that this is not technically feasible. Here, for example, Alcatel states point-blank, “it is not feasible to treat line cards as UNEs subject to collocation.... Line cards are proprietary, internal components of the DLC systems themselves and cannot operate as stand-alone network elements.” Alcatel at 12. Sprint does, however,

recognize that the competitive nature of the market dictates that the Commission remove retail broadband services from Title II regulation. Sprint at 5-6.⁴

The Commission should flatly reject the arguments of the telephone companies' competitors to regulate broadband services as if they were narrowband voice services. Instead, it should stop burdening broadband services offered by the telephone companies – and only the telephone companies – with wholesale requirements that are counter-productive to the continued development of competition and to meeting the requirements of section 706. It should forbear from subjecting retail broadband services to the requirements of Title II of the Act, but, instead, should allow the competitive marketplace to set rates, terms, and conditions for all providers' services.⁵

⁴ Adelphia Business Solutions uses its comments to argue a series of issues regarding payment for Internet access, provision of voice-grade unbundled network elements and loop-transport combinations, and commingling of special access services and unbundled network elements. These issues are entirely unrelated to deployment of advanced services and should be disregarded in this proceeding. In addition, Adelphia's factual allegations are simply wrong. For example, Adelphia, without any specifics or documentation, claims that some Verizon companies "routinely" issue "no facilities available" notices when receiving requests for conversions of special access services to loop-transport combinations. Adelphia at 13. This is not Verizon's policy, and Verizon cannot find any instance in which it has issued such notices. Likewise, it is not true that Verizon has failed to provide billing credits for the February 2001 conversion requests, as Adelphia claims. *Id.* at 14. Those credits appeared in Adelphia's August and September invoices.

⁵ The Commonwealth of the Northern Mariana Islands (the "Marianas") asks the Commission to require the Micronesian Telecommunications Corporation ("MTC"), the incumbent local exchange carrier in the Marianas and a subsidiary of Verizon Communications, to file broadband reports, which are now voluntary, whether or not MTC reaches the reporting threshold that applies to all other jurisdictions. Marianas at 6-8. There is no valid justification for requiring such reports for the Marianas that would not be required elsewhere. Once MTC reaches the reporting threshold of 250 broadband lines in the Marianas, it will file broadband reports, but there is no reason to require such reports prior to reaching that threshold.

V. Deregulation, Not Additional Reports, Will Best Meet the Dictates of Section 706.

Several parties call for broadband providers to submit a host of additional reports and detailed data that either does not exist, could not be developed except at considerable cost, or is highly competitively sensitive. *See, e.g.*, WorldCom at 4-7, Plano at 2, Texas PUC at 3, Alcatel at 4-5, Ruby Ranch at 18-21. As Verizon discussed in its opening comments, requiring more data will not facilitate deployment of advanced services or encourage investment in new technology. *See* Verizon at 3, 23-24. Instead, the Commission should step aside and allow the competitive marketplace to operate free of regulatory constraints.

In addition, development and filing of the additional data the parties request would be extremely burdensome. As Verizon previously told the Commission, to provide detailed subscribership data by zip code would require a redesign of its systems to include a field for customers' zip codes, which do not generally appear in the system records, and then manpower to manually input the zip codes in the relevant records. The cost to Verizon to set up these systems – a cost that would not occur except for these reports – would be more than \$8 million and this redesign would take up to 18 months to accomplish. Ongoing expenses of these reports would be \$1.5 million more per report than the existing reporting burden. *See Local Competition and Broadband Reporting*, CC Docket No. 99-301, Comments of Verizon at 3 (filed March 19, 2001). These costs would simply add to the price of providing advanced services and would, therefore, suppress rather than increase demand. In addition, if detailed reports were required only of the telephone companies' DSL services, as WorldCom, Alcatel, and Ruby Ranch ask, the cable companies, which have the largest positions in the market, as well as the new satellite and fixed wireless competitors, would be given an even greater advantage than they have now. Not only would only the telephone companies' competing services be regulated, but they would be

forced to disclose detailed data about their subscribership, deployment, and revenues that their unregulated competitors could use to obtain a further unfair marketplace advantage.

VI. The Commission Should Enforce Section 253 and Not Allow Localities To Regulate Broadband Services.

The city of Plano, Texas, asks the Commission to shift oversight authority over broadband services to local governments. The Commission should deny that request. Regulation of telecommunications services should remain with the Commission and state commissions and not be disbursed among thousands of local municipalities, each of which could regulate the services differently.⁶ Such regulation would at best increase costs and delay deployment and at worst prevent large segments of the public from receiving broadband services.

This is not a hypothetical concern. Several parties here describe circumstances where municipalities have seriously impaired broadband deployment by imposing excessive fees, delaying access to rights of way, seeking to regulate the services that can be provided through those rights of way, and preventing placement of needed remote terminals in public rights of way. *See, e.g.*, Metropolitan Fiber Networks (“MFN”), Global Crossing, Adelphia at 19-25, Qwest at 11-15. MFN, for example, relates that some cities and towns impose “unreasonable

⁶ The Census Bureau reports that the United States contains some 3,141 counties and 11,097 municipalities with at least 2,500 inhabitants. United States Census Bureau, County and City Data Book, 1994 (Revised June 21, 1999); United States Census Bureau, USA Counties 1998 (Revised Nov. 15, 1999).

demands for access to public rights of way,” even where similar demands by other municipalities previously have been found unlawful. MFN at 2-3.⁷

Verizon has had a number of similar disputes with municipalities. In one recent instance, Verizon had to completely bypass a municipality with a fiber optic cable, at considerable expense, because of unreasonable requirements the municipality placed on placement of that cable. In another case, currently being challenged in court, a city is attempting to require Verizon to construct ducts with far greater capacity and with more complexity than it needs (*i.e.*, with an inner duct) and then transfer ownership to the city without compensation. Pre-merger GTE documented dozens of additional state or local actions or ordinances that inhibited its ability to place facilities in public rights of way. *See Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Comments of GTE at App. A (filed Oct. 12, 1999), a copy of which is attached.

The lawfulness of state and local right-of-way restrictions on deployment of telecommunications services is before the Commission in WT Docket No. 99-217. That docket is the best vehicle for the Commission to address the issue, because a substantial record has been compiled there showing how existing restrictions are interfering with provision of all types of telecommunications services, including broadband, in violation of section 253 of the Act. If the Commission chooses to address the issue here, however, it should declare that it will enforce the dictates of section 253 of the Act and entertain complaints regarding state or local statutes,

⁷ In a decision earlier this year, the Ninth Circuit found that provisions of ordinances in several Washington cities had the effect of prohibiting Qwest from providing broadband telecommunications services, in violation of section 253 of the Act. Similar provisions in ordinances elsewhere previously had been stricken by other courts. *See City of Auburn, et al. v. Qwest Corp.*, 247 F.3d 966 (9th Cir. 2001).

regulations, or activities that have the effect of prohibiting an entity to provide any telecommunications service, in contravention of section 253(a). It should find that any undue delay in granting access to public rights of way to install needed facilities and equipment is inconsistent with section 253(a) as well if it prevents a provider from offering services to a customer. Under section 253(d), the Commission should preempt statutes, ordinances, regulations and practices of states or localities that are inconsistent with section 253(a).

VII. Conclusion

As discussed above and in Verizon's opening comments, the Commission should take immediate action to eliminate most wholesale regulation of broadband services and forbear from all Title II retail regulation of such offerings.

Respectfully submitted,

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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.