

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

In the Matter of)	
)	
Review of Regulatory Requirements)	CC Docket No. 01-337
for Incumbent LEC Broadband)	
Telecommunications Services)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

The National Association of State Utility Consumer Advocates (“NASUCA”) offers these reply comments in response to the Notice of Proposed Rulemaking (“Notice”) released in this docket on December 20, 2001. NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.¹

The Notice requested comment on whether incumbent local exchange carriers (“ILECs”) should be found to be non-dominant in the provision of broadband services, so as to receive relaxed regulation for those services. It is NASUCA’s position that the ILECs have not met their burden to be declared non-dominant in the broadband market.²

¹ See, e.g., Ohio Rev. Code Chapter 4911.

² It is important to maintain the distinction between broadband services, ILEC provided or not, and broadband Internet access services, which combine broadband service (a telecommunications service) and Internet access service (an information service). See *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33 *et al.*, Notice of Proposed Rulemaking (February 15, 2002) (“*Wireline Broadband Internet Access NPRM*”).

If, despite the ILECs' failure, the Commission grants the ILECs' request for relaxed regulation, competition in the broadband market will be harmed. If in addition to granting this request the FCC determines that the ILECs need not resell broadband services at forward-looking rates, consumers will be left with a monopoly, or at best a duopoly, at a time when consumers increasingly need the variety of service that competitive local exchange carrier ("CLEC")-provided broadband internet access can give.

This is shown by the many comments filed with the Commission. Hundreds of pages have been placed into the record. These comments, put together, contain the key concepts for the Commission's consideration. Rather than spend time rewriting or restating, in these reply comments NASUCA will point the Commission to the appropriate material in other parties' initial comments.³

- The ILECs assert that they are non-dominant in both the retail mass market (into which residential customers fall) and the business market. BellSouth at 31-45; Qwest at 36-45; SBC at 15-32; Verizon at 8-22.⁴ The ILECs assert that the geographic market is national or regional in scope. BellSouth at 30; Qwest at 26-31; SBC at 32; Verizon at 22-24. The ILECs assert that removing dominant carrier regulation will promote broadband competition and deployment. SBC at 65-66; Verizon at 24-46.

³ NASUCA addresses here comments filed by Ad Hoc Telecommunications Users Committee ("Ad Hoc"); Alliance for Public Technology ("APT"); Association for Local Telecommunications Services ("ALTS"); Association of Communications Enterprises ("ASCENT"); AT&T Corp. ("AT&T"); BellSouth Corporation ("BellSouth"); Cbeyond Communications and NuVox ("Cbeyond/NuVox"); Competitive Telecommunications Association ("CompTel"); DIRECTV Broadband, Inc. ("DIRECTV"); DSLNet Communications, LLC, Focal Communications Corporation and Pac-West Telecomm, Inc. ("DSLNet, et al."); Earth link, Inc. ("Earthlink"); Information Technology Association of America ("ITAA"); Mpower Communications Corp. ("Mpower"); National Telecommunications Cooperative Association ("NTCA"); New Mexico Internet Professionals Association ("NMIPA"); New York State Public Service Commission ("NYPSC"); Public Service Commission of Missouri ("MoPSC"); Public Service Commission of Wisconsin ("WisPSC"); SBC Communications, Inc. ("SBC"); United States Internet Industry Association ("USIIA"); US LEC Corp. ("US LEC"); and WorldCom, Inc. ("WorldCom").

⁴ The rural telecommunications companies represented by NTCA do not support the larger ILECs' position on this point. NTCA at 1.

- The ILECs point to cable modems, wireless and satellite services as alternatives for the retail mass market. BellSouth at 32-39; SBC at 32-34; Verizon at 13-20.
- Other parties note the additional existence of the wholesale mass market, and note the ILECs' dominance in that market. ALTS at 8; AT&T at 49; DIRECTV at 2-7; Earthlink at 4-14, 22-25; ITAA at 5-15; WorldCom at 11-20.⁵ Other parties note the importance in the market of ILECs being able to bundle broadband services with other services. MoPSC at 7. Other parties note the importance of CLECs also being able to supply such bundles to consumers. AT&T at 51.
- Other parties demonstrate that the ILECs are also dominant in the retail mass market in many areas of the country. See ALTS at 5-6; MoPSC at 3-4; WorldCom at 21. This is partly because the geographic scope of the market is local. WisPSC at 4; WorldCom at 10. NTCA describes the rural broadband market as "nascent." NTCA at 2.
- As to the alternatives to wireline broadband services, "[t]here are still a large number of areas where no cable modem alternative exists." ALTS at 6; see also AT&T at 6; CompTel at 11-12; US LEC at 17. Thus "the Commission cannot simply find that some broadband alternatives exist in some markets for some classes of customers, and then declare all of the ILECs non-dominant based on that finding alone." AT&T at 6.⁶
- Cable modem broadband access is itself a monopoly; cable providers are not required to allow competing access to their facilities. AT&T at 79; WorldCom at 12. Giving ILECs regulatory parity by removing their access responsibilities will turn a market where there is competition in one of the modes of service provision into a tight duopoly. See ALTS at 17-18; Earthlink at 18-19.
- Neither wireless nor satellite broadband services currently challenge ILEC broadband services. AT&T at 42-43; CompTel at 9-11; US LEC at 18; Verizon at 14.

⁵ NASUCA agrees that it is problematic that the Commission has asked whether the ILECs have market power before having settled on a definition of the market. Ad Hoc at 9; ALTS at 4; DSLNet, *et al.* at 1-4.; US LEC at 1-2

⁶ Earthlink discusses the ways in which cable modem access is not the basis for effective competition against wireline broadband service. Earthlink at 16-18.

- “[I]ntra-modal competition between ILECs and CLECs must be promoted regardless of inter-modal competition between LECs, wireless and satellite providers, and cable modem providers.” ALTS at 3; see also Mpower at 3.⁷
- Granting non-dominant status to ILEC broadband services will harm intramodal competition. Ad Hoc at 19-20; AT&T at 8, 59; DIRECTV at 15-16; Earthlink at 19-22.
- Granting non-dominant status to ILEC broadband services will not speed deployment of broadband services. ALTS at 14; DSLNet *et al.* at 13-18; ITAA at 23-26; US LEC at 19-24.⁸ The Commission has previously determined that broadband services are being deployed on a reasonable and timely basis. ASCENT at 6.⁹ “[D]uring the last decade, one theme is consistent: promises of investments in advanced high-speed networks in exchange for regulatory forbearance have gone unfulfilled.” WisPSC at 8; see also Cbeyond/NuVox at 4.¹⁰
- The ILECs are deploying broadband services at a rate that implies they need no more incentive. AT&T at 69, 70-74. Competition, not deregulation, is the most effective spur to broadband deployment. Cbeyond/NuVox at 12-27; see CompTel at 26.
- This proceeding must be viewed in context with other legislative proposals and rulemakings. MoPSC at 2.¹¹ These include the remand of the Commission’s determination that internet-bound calls to ISPs are interstate (see NYPSC at 2) and the Commission’s consideration of whether broadband internet service is an information service, a telecommunications service, or a hybrid of both.¹² AT&T

⁷ NMIPA paints a stark picture of the not very competitive market for broadband services in New Mexico. NMIPA at 2-7.

⁸ Which is better: rapid deployment by a monopolist or somewhat slower deployment in a competitive market? See ALTS at 12. As US LEC notes, the fact that the ILECs assert that only they can ensure widespread broadband deployment underscores the ILEC’s market power. US LEC at 15-16.

⁹ APT is one of the few non-ILEC parties to support relaxing regulation as the ILECs wish. APT at 4. APT believes that doing so will enhance deployment. APT is incorrect.

¹⁰ “This approach could encourage broadband deployment -- if at all -- only at the unacceptable and unlawful cost of reducing broadband and voice *competition*.” AT&T at 66 (emphasis in original).

¹¹ See Cbeyond/NuVox at 9-12 for issues relating to the so-called “Tauzin-Dingell” bill, H.R. 1542.

¹² See *Wireline Broadband Internet Access NPRM*. USIIA’s extensive arguments on the subject of telecommunications services vs. information services (USIIA at 13-14) are more properly made in that docket.

(at 60-61) details other proceedings in which the ILECS are seeking to restrict competition in this market.

Conclusion

Dave Burstein, Editor of DSL Prime, correctly identified the key component of the public interest in this proceeding: “the hundreds of millions of Americans who can benefit from the fast Internet....” Their interests will not be served by declaring the ILECs non-dominant or by denying other carriers access to the ILECs’ backbone facilities so that the other carriers can provide broadband services.

NASUCA urges the Commission to enhance consumer access to broadband service and to promote competition in the broadband service market by not prematurely deregulating the ILECs’ provision of broadband services. Giving the ILECs regulatory parity with the cable modem industry will limit consumer access and will harm competition.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS’ COUNSEL

David C. Bergmann
Assistant Consumers’ Counsel
Bergmann@occ.state.oh.us

Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

Michael J. Travieso
Chair, NASUCA Telecommunications
Committee

NASUCA
8300 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380