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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities	)	CC Docket No. 02-33
	)	
Universal Service Obligations of Broadband Providers	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	)	CC Dockets Nos. 95-20, 98-10
	)	

COMMENTS OF AOL TIME WARNER INC.

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COMMENTS OF AOL TIME WARNER INC.

AOL Time Warner Inc.,[1] by its counsel, files these comments in the above-captioned rulemaking proceeding designed to examine the appropriate legal and policy framework for broadband access to the Internet over existing and future wireline infrastructure of the traditional telephone network.[2] As set forth herein, AOL Time Warner agrees that broadband Internet access services are properly deemed information services, urges the Federal Communications Commission ("FCC" or "Commission") to reaffirm its successful policies that foster consumer choice and Internet Service Provider ("ISP") competition via wireline facilities, and suggests that the FCC update and streamline its regulatory framework to achieve more effectively these goals.

[1] AOL Time Warner is the world's first Internet-powered media and communications company, whose industry-leading businesses include interactive services, cable systems, publishing, music, networks and filmed entertainment.

[2] Notice of Proposed Rulemaking, CC Docket Nos. 02-33, 95-20, 98-10; FCC No. 02-42, rel. Feb. 15, 2002 ("NPRM"). Throughout these comments, the term "wireline" is used, as described in the NPRM, to refer to "the existing and future infrastructure of the traditional telephone network." NPRM at n.1.

INTRODUCTION AND SUMMARY

Through its unique combination of brands and other assets, AOL Time Warner provides consumers subscription services, commerce, and content through a diversity of media. AOL Time Warner has an interest in the instant NPRM because an important part of the AOL Time Warner mission is to ensure that the products and features of America Online, Inc. ("AOL"), which include an array of interactive services, Web brands, Internet technologies and e-commerce services, are ubiquitously available to American consumers today and in the future.[3] Currently, AOL products and features are accessed overwhelmingly through the wireline infrastructure, and increasingly, high-speed features are accessed via wireline carrier broadband telecommunications inputs. Consumers using the high-speed services of AOL can enjoy streaming video, audio and download features, such as Sessions@AOL (which provides exclusive interviews and music from a variety of recording artists), a dynamic mix of constantly updated content of news, sports, weather and business/personal finance audio and video, and the latest movie trailers and music videos.

As high-speed facilities are deployed throughout the United States, AOL Time Warner is committed to developing applications and features that meet consumer needs and spark interest in and demand for broadband-based services by bringing consumers all the best that broadband has to offer. Since the advent of the Internet, AOL (along with thousands of other ISPs) has invested enormous resources in Internet services and applications in reliance upon the FCC's pro-competitive, pro-consumer, regulatory framework. This successful framework, built upon the fundamental premise of nondiscriminatory access to wireline infrastructure, has fostered an

[3] These include AOL, an Internet access service with more than 34 million members, and CompuServe, with more than 3 million members, the company's two worldwide Internet services; several leading Internet brands including ICQ, AOL Instant Messenger and MapQuest; the AOL Anywhere.com and Netscape.com portals; the Netscape 6, Netscape Navigator and Communicator browsers; AOL Moviefone, the nation's No. 1 movie-listing guide and ticketing service; AOL@School, a free online learning tool for K-12 classrooms; and Spinner, Winamp and SHOUTcast, leaders in Internet music.

environment whereby consumers can enjoy the myriad applications and services that have been and continue to be developed.

The FCC has enumerated several worthy objectives in this NPRM.[4] The FCC must, however, recognize that its paramount goal is consumer welfare and that other objectives cannot be viewed as ends in themselves. For decades, the FCC has successfully promoted the openness of our nation's wireline infrastructure and a policy of competition for "data services." This farsighted regime has allowed all entities, including wireline carriers, to offer consumers competitive information services that ride upon wireline transmission networks. While the Commission certainly could not have contemplated today's wealth of offerings, including Internet applications and software, streaming and personalized content, e-mail, Instant Messaging, and others, it understood that by ensuring non-discriminatory access to wireline networks, consumer welfare would be optimized.

AOL Time Warner has explained in a companion proceeding that consumers today receive wireline broadband Internet access services from their ISPs who, in turn, acquire almost all wireline high-speed transmission capacity from incumbent carriers.[5] Here, it urges the FCC to reaffirm that the high-speed Internet access services offered by ISPs should remain classified as "information services," consistent with the Communications Act and longstanding precedent. Moreover, there is nothing about the nature of broadband Internet access or the underlying transport that changes when offered by wireline carrier-affiliated ISPs. Commission precedent underscores that these "self-provisioned" broadband Internet access services should be properly considered information services just as "self-provisioned" dial-up Internet access services are.

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[4] These include the encouragement of ubiquitous availability of broadband to all Americans, the promotion of multiple platforms, the creation of a minimal regulatory environment to stimulate investment and innovation and the development of an analytical framework across all platforms. NPRM at ¶¶ 3-6.

[5] *In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services,* Notice of Proposed Rulemaking, CC Docket 01-337, rel. Dec. 20, 2001 ("Dominant/Non-Dominant NPRM").

Indeed, it is precisely because of the merits of the classification system – that were codified in the Telecommunications Act of 1996 ("1996 Act") – that the FCC should not now create a new "hybrid" classification or embark on a path to increase regulation of information services through an unprecedented expansion of its Title I authority.

Further, because the transmission services at issue here (DSL transport services) are unquestionably "telecommunications services," the FCC and the offering wireline carriers may not simply define away relevant legal obligations. Not only has the Commission repeatedly reached the legal conclusion that DSL transmission services are properly offered within the framework established by Title II of the Communications Act, the carriers themselves have consistently represented these services as publicly-available at rates, terms and conditions determined to meet the carriers' business objectives. To the extent wireline carriers seek to discontinue service offerings, they must abide by Section 214 of the Communications Act to assess whether doing so will be consistent with the public interest.

The FCC's legal conclusion that DSL transport services must be made available to ISPs on non-discriminatory rates, terms and conditions is good policy. A robust and competitive ISP industry promotes diversity and provides consumer choice, thereby stimulating demand, innovation and investment. In fact, experience has shown that this model has not only been beneficial to consumers and ISPs, it has been a plus for wireline carriers, spurring network growth and increasing revenues.

While the basic right of non-discriminatory access to wireline carrier services should be preserved, AOL Time Warner agrees that such regulation should be narrowly tailored.[6] Today's

[6] Significantly, even as leading Congressional policymakers are debating various levels of wireline carrier "deregulation," including reduction or elimination of competitive carrier access and unbundling rights pursuant to Section 251 of the Communications Act, there is agreement that ISP access to wireline broadband transmission services should be specifically preserved. *See e.g.*, "Broadband Regulatory Parity Act of 2002," S.11, 107th Cong., 2d Sess., introduced April 30, 2002 ("Breaux-Nickles" bill) at Section 4(c); "Internet Freedom and Broadband Deployment Act of 2001," H.R. 1542, 107th Cong., 2d Sess., Feb. 28, 2002, ("Tauzin-Dingell" bill) at Section 5.

regulation of wireline carriers has been premised on encouraging the unfettered growth of information services while ensuring that wireline carriers could not act on incentives to discriminate and engage in other anticompetitive conduct. As such, the FCC should build upon the successes of the past, while heeding the failures, and adapt its rules to ensure they work in today's broadband environment. FCC rules must promote the public's interest in information services competition, but do so without imposing unnecessary burdens on wireline carriers. As such, AOL Time Warner suggests the FCC streamline its rules to focus on two vital tenets: (1) non-discriminatory access to broadband wireline transmission services at just and reasonable rates, terms and conditions; and (2) effective and swift enforcement. In this way, the FCC will implement best the pro-competitive mandate of the Communications Act.

I. BROADBAND INTERNET ACCESS SERVICES ARE INFORMATION SERVICES

Since the advent of data communications, federal law and policy has wisely concluded that there are tremendous public interest benefits to be attained by allowing "data services" to be offered outside of the regulatory regime designed for monopoly-based, circuit-switched voice telephony services.[7] The FCC should reaffirm that these data services – now defined in the Telecommunications Act of 1996 ("1996 Act") as "information services" – continue to include Internet access, whether broadband or narrowband and regardless of whether offered by an ISP that is affiliated or unaffiliated with a wireline carrier. By drawing a sharp distinction between information services and the carriers' underlying telecommunications used to reach consumers (a distinction later codified in the 1996 Act), this successful regulatory framework has redounded to

[7] *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities*, Tentative Decision, 28 FCC 2d 291 (1970); Final Decision and Order, 28 FCC 2d 267 (1971) ("Computer I") (subsequent history omitted); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 77 FCC 2d 384 (1980) ("Computer II") (subsequent history omitted); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) ("Computer III") (subsequent history omitted).

the clear benefit of the American public. As such, the FCC should also reject the expansion of its regulation through Title I authority over services that have been properly treated as unregulated information services.

A. Longstanding Precedent Supports The Information Services Classification

In 1966, the FCC first inquired into the "interdependence of computer and communications services and facilities" in order to consider and resolve regulatory and policy questions regarding the appropriate scope of its jurisdiction over and role in "hybrid" computer and communications services.[8] The twin goals of this first Commission "*Computer Inquiry*" proceeding – and the long line of decisions that have followed – were to allow telephone carriers to enter the competitive computer and data processing service markets, while simultaneously protecting their customers, and emerging companies in the data service industry, from unlawful cross-subsidization and discriminatory behavior designed to drive competitors out of the market.[9]

The FCC's initial inquiry led to the development of an express and consistent policy to foster the growth of computer and related services (first called "data processing," then "enhanced" and ultimately "information" services) without the burdens of a regulatory structure that was largely created to protect the public interest in a monopoly environment.[10] By allowing

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[8] *See Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities*, 7 FCC 2d 11 (1966); *see also*, Computer I, Tentative Decision, 28 FCC 2d 291, 291-292 (1970).

[9] Computer I, Tentative Decision, 28 FCC 2d at 301-302. These goals have remained paramount as the FCC has refined its decisions in its subsequent decisions in the *Computer Inquiries*. For example, in Computer II, to prevent improper cross-subsidization of unregulated services with regulated services and unlawful discrimination by the former Bell Operating Companies ("BOCs") in favor of their affiliated information services or customer premises equipment ("CPE"), the FCC required separate subsidiaries. Computer II, 77 FCC 2d at 475-488. In fact, even when the FCC generally unbundled and deregulated the installation of customer premises equipment ("CPE"), the BOCs remained subject to some regulation to safeguard the public from anticompetitive conduct. Computer II, 77 FCC 2d 384, at ¶¶ 140-149. Similarly, when the FCC shifted its approach to non-structural safeguards in Computer III, the FCC again emphasized its goal of ensuring that unaffiliated enhanced services providers would not be disadvantaged *vis a vis* affiliated enhanced services providers. Computer III, 104 FCC 2d at 1126-28.

[10] See Computer I, 28 FCC 2d 267 (1971); Computer II, 77 FCC 2d 384 (1980); Computer III 104 FCC 2d 958 (1986). For almost twenty years, the FCC has operated under a regulatory framework that distinguishes between "basic" telecommunications services and "enhanced" services. Pursuant to FCC rules, an "enhanced service" is one that "employs computer processing applications that: (1) act on the format, content, code, protocol or similar

these "enhanced services" to develop free from regulation, the Commission fulfilled its goal of fostering a competitive enhanced services industry while permitting incumbent wireline carriers also to participate. Early on, the Commission understood the overarching benefits of a market-based approach to enhanced services, recognizing that these services would be the cornerstone of future economic growth.[11] Unlike wireline transmission services, where conditions spawned common carrier regulation, the flow of information content and services has remained free. Since then, each time federal policy makers have re-examined this issue, they have consistently reaffirmed this approach, including ultimately through its embodiment in the 1996 Act.[12]

In addressing the regulation of services, the 1996 Act established specific definitions for "information services," "telecommunications," and "telecommunications service" based upon the

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aspects of a subscriber's transmitted information; or (2) provide the subscriber additional, different, or restructured information; or (3) involve subscriber interaction with stored information." 47 C.F.R. § 64.702(a). Both the FCC and incumbent carriers have repeatedly affirmed the "enhanced" nature of Internet services. *See, e.g., Federal-State Joint Bd. On Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd. 8776, 9180, ¶ 789 (1997) ("Universal Service Order"); *Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, CCB Pol. 96-09, Order, 11 FCC Rcd 6919 (Comm. Car. Bur. 1996). *See also Reply Comments of Bell Atlantic*, File No. CCB/CPD 97-51 (Dec. 4, 1997); Reply Comments of SBC, File No. CCB/CPD 97-51 (Dec. 4, 1997) at 1-2. This structure, which was adopted first in 1980 in the FCC's proceeding, reflects a fundamental understanding of the need to remove "the threat of regulation from markets which were unheard of in 1934 and bear none of the important characteristics justifying the imposition of regulation." Computer II, 77 FCC 2d at 423, at ¶ 101.

[11] *See, e.g.,* Computer II, 77 FCC 2d at 422-23. Significantly, even before the adoption of Computer II, the FCC had stressed that the computer industry "has become a major force in the American economy" and emphasized that "its importance to the economy will increase in both absolute and relative terms in the years ahead." Computer I, 28 FCC 2d at 268-69, ¶ 7.

[12] Under present law, all "enhanced services" are by definition "information services." *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, 11 FCC Rcd 21905, at ¶ 102, (1996) ("all of the services that the Commission has previously considered to be 'enhanced services' are 'information services'"); United States v. AT&T, 552 F. Supp. 131, 178, n.198 (D.D.C. 1982) (subsequent history omitted) ("'enhanced services' . . . are essentially the equivalent of the 'information services' described in the proposed decree"). "Information service" means "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of such capability for the management, control, operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. §153(20). By contrast, "telecommunications" means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." Id. § 153(43). "Telecommunications service" is the offering of telecommunications for a fee directly to the public; and a "telecommunications carrier" is any provider of telecommunications services. Id. §§ 153(46), (44).

terms used in the MFJ.[13] The FCC has expressly recognized in implementing the 1996 Act that that this definitional structure parallels its basic/enhanced framework, and has asserted that "Congress, by distinguishing 'telecommunications service' from 'information service,' and by stating a policy goal of preventing the Internet from being fettered by state or federal regulation, endorsed this general approach."[14] Congress, therefore, built upon the FCC's regulatory classifications, incorporating the same principles to define "information services" as existed with respect to "enhanced services." Today, nearly 40 years after the FCC first considered the treatment of computer and technological developments that utilize telecommunications services, the amazing growth of the advanced technology and computer services industries continues to confirm the wisdom of this competitive policy. The FCC itself has touted that "The Internet and other enhanced services have been able to grow rapidly in part because the Commission concluded that enhanced service providers were not common carriers within the meaning of the Act."[15]

Despite the suggestion in the NPRM that "broadband offerings may differ in form and scope from previous information services,"[16] Internet access services (described as "new, bandwidth-intensive, multimedia information services"[17]) are properly considered "information services" within the framework posited by the 1996 Act[18] and FCC precedent.[19] That the speed

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[13] *See* H.R. Rep. No. 204, Part 1, 194th Cong., 1st Sess. 125 (1995) ("'Information service' and 'telecommunications' are defined based on the definition [sic] used in the Modification of Final Judgment"); *cf. United States v. AT&T*, 552 F. Supp. at 229. In the House-Senate conference on the 1996 Act, the Senate receded to the House on the definition of information service. The House receded to the Senate on the definition of telecommunications, but the House and Senate bills contained similar definitions of this term. H.R. Conf. Rep. No. 458, 1104th Cong., 2d Sess. 116 (1996).

[14] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, ¶ 95 (1998) (footnotes omitted) ("*Report to Congress*"). *See also id.* at ¶¶ 73-82.

[15] *Report to Congress*, 13 FCC Rcd 11501 at ¶ 95.

[16] NPRM at ¶ 13.

[17] *Id.*

[18] *See* n. 12, *supra*.

of the Internet access transmission has increased to "broadband" speeds is not relevant to this conclusion. While the emergence of broadband capabilities presents business challenges as technology and consumer demand evolve, the present regulatory and statutory classification works well and should be retained. Indeed, there is no legal or policy basis for the FCC to alter the sound distinction between information services and the telecommunications used to provide such services simply because Internet access (or any other new high-speed or advanced information services) are offered via broadband transmission. The FCC correctly put it in its 1998 *Report to Congress*: "An Internet access provider, in that respect is not a novel entity incompatible with the classic distinction between basic and enhanced services, or the newer distinction between telecommunications services and information services. In essential aspect, Internet access providers look like other enhanced – or information – service providers."[20]

As such, the Commission should again reject the creation of a regulatory category of a "new kind of hybrid communications service,"[21] just as the FCC has rejected such a classification in the past.[22] The FCC's view that creating a "hybrid" service classification would likely result in the "direct or indirect expansion of regulation over currently unregulated vendors of computer services and deprive consumers" of innovative services is just as true today as it was when first articulated by the Commission over 20 years ago.[23]

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[19] *See, e.g., Report to Congress*, 13 FCC Rcd 11501 at ¶¶ 73-82; *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets,* CC Docket Nos. 96-61 and 98-183, Report and Order, 16 FCC Rcd 7418 at ¶ 2 (2001) ("CPE/Enhanced Services Unbundling Order"); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Second Report and Order, FCC 99-330, at ¶¶ 3, 14, 20 (1999) ("*Advanced Services Second R & O*").

[20] *Report to Congress,* 13 FCC Rcd 11501 at ¶ 81.

[21] NPRM at ¶ 27.

[22] *Report to Congress*, 13 FCC Rcd 11501 at ¶¶ 56-60 (describing FCC consideration and rejection of the "hybrid" category of services as distinct from information services and citing to extensive FCC precedent).

[23] Computer II, 77 FCC 2d at 425, ¶ 108. Indeed, the FCC concluded that the "hybrid" classification led to confusion and delay and ultimately was unworkable. *See id.*, 77 FCC 2d at 423-28, ¶¶ 102-113.

Further, despite the well-settled nature of the statutory and regulatory regime, which distinguishes between information services and the telecommunications component they ride on, the NPRM nonetheless raises a question as to whether the framework should be altered when "wireline broadband Internet access service [is] provided over the provider's own facilities."[24] Referencing the FCC's prior statements in the *Report to Congress*, the NPRM seems to suggest that there is somehow an open question as to how to classify the transmission services of wireline carriers that are also offering Internet access services themselves.[25] In fact, the only open question in the *Report to Congress* regarding so-called "self-provisioned" services was a question of universal service fund ("USF") contribution, not a regulatory classification question.

There, the FCC explained that Internet access, like all information services, is provided "via telecommunications"[26] and that the provision of transmission to ISPs "constitutes the provision of interstate telecommunications."[27] Accordingly, wireline carriers offering services to ISPs were required to contribute to universal service. In discussing theoretical arguments that an ISP could be deemed to be "furnishing raw transmission capacity to itself," the Commission stressed that when the ISP owns the underlying wireline facilities, "it should itself be treated as providing the underlying telecommunications."[28] While the Commission did note in the *Report to Congress* that it had not required entities that "provide telecommunications solely to meet their internal needs" to contribute to universal service, this statement has no bearing on the classification of the transmission component in the broadband wireline context.[29] As such, the

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[24] NPRM at ¶ 24.

[25] *Id.*

[26] *Report to Congress* at ¶¶ 67-70.

[27] *Id.* at ¶ 67; Universal Service Order, 12 FCC Rcd 8776 at ¶ 780; 47 C.F.R. § 54.703. As explained in Section II, *infra*, the transmission offered by wireline carriers constitutes "telecommunications services" as a legal matter.

[28] *Report to Congress*, 13 FCC Rcd 11501 at ¶ 69 n.138.

[29] *Id.* at ¶ 70.

FCC never intended to – and should not now – blur the distinction between information services and the telecommunications used to provide them.

Certainly, the FCC has never suggested in the narrowband dial-up context that carriers are "self provisioning" such that the transmission services underlying the information service are no longer telecommunications services just because the carrier-affiliated ISP also uses the wireline telephony infrastructure. Nor is there any legal basis that would allow wireline carriers lawfully to transform services into something other than what they are or to define away the facts of how services are today offered. To be sure, wireline carriers are free to make decisions about how their services are offered, including whether to continue or discontinue the service offerings subject to a public interest analysis under Section 214 of the Communications Act.[30] What carriers may not do, however, consistent with longstanding precedent and the Communications Act,[31] is simply decide that it is in their own business interests to provide services only to themselves and refuse to offer services without any analysis of how the public interest might be affected. Indeed, if such were the case, then by this reasoning, wireline carriers could decide that they no longer want to offer open, non-discriminatory access to ISPs for dial-up services and refuse service on the grounds that they are just "self-provisioning." Using this logic, incumbent wireline carriers offering long distance services could even claim they are simply "self-provisioning" exchange access and discontinue these services to all but their own long distance entity.

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[30] 47 U.S.C. § 214. *See also, e.g., Reminder to Common Carriers Regarding Discontinuance of Domestic Service Under Section 214 of the Communications Act*, Public Notice, 16 FCC Rcd 9522 (Net. Serv. Div. 2001).

[31] *See NARUC v. FCC*, 525 F.2d 630, 644 and n.76 (D.C. Cir. 1976) ("*NARUC I*"), *cert. denied*, 425 U.S. 992, 96 S. Ct. 2203, 48 L. Ed. 2d 816 (1976); *Hughes Communications, Inc.*, Order and Authorization, 12 FCC Rcd 7534, 7539, ¶ 17 (1997) (citing *Domestic/International Satellite Consolidation Order*, 11 FCC Rcd 2429, 2436 (1996)). The FCC properly regulates an entity as a common carrier if "(1) there is or should be any legal compulsion to serve the public indifferently; or (2) there are reasons implicit in the nature of the service to expect that the entity will in fact hold itself out indifferently to the eligible user public." *Hughes Communications*, 12 FCC Rcd at 7539 ¶ 17 (citing *NARUC I*).

As described above, the FCC has long recognized, well before the 1996 Act, that wireline carriers should be free to compete and offer consumers the benefits of their information services.[32] This understanding is exactly what led to the farsighted *Computer Inquiries*.[33] When the 1996 Act was passed, the distinction between enhanced services and the telecommunications they ride upon was codified, clearly expressing the desire of Congress to adopt the classifications that had proved so successful in serving the public interest. Thus, while AOL Time Warner is excited about the prospects and opportunities afforded by emerging broadband information services, nothing about these services alters either their fundamental nature as information services or the underlying wireline transmission they ride upon.

B. The FCC Should Not Expand its Regulation Over Information Services

In considering the most appropriate regulatory framework for wireline broadband services, the FCC should also take care not to start effectively "regulating" into existence a new regime for information service providers by expanding its rules to impose Title II-type requirements on information service providers.[34] Indeed, not only should the FCC heed the legitimate boundaries upon its Title I authority,[35] more importantly, it should recognize that as a policy matter, it would undermine decades of success suddenly to impose regulation upon a flourishing industry.

As such, the FCC should move cautiously in regulating pursuant to Title I since it runs the real risk of increasing rather than decreasing regulation, reversing decades of success where the FCC has rightly allowed information services to grow and blossom. In effect, by proposing

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[32] *See* fn. 9, *supra*. *See also* Jason Oxman, *The Commission and the Unregulation of the Internet,* OPP Working Paper Series No. 31, July 1999 at 8-12 ("OPP Working Paper No. 31").

[33] *See Report to Congress*, 13 FCC Rcd 11501 at ¶¶ 23-27.

[34] NPRM at ¶¶ 43-61.

[35] *See California v. FCC*, 905 F.2d 1217, 1240 (9th Cir. 1990) (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178, 20 L. Ed. 2d 1001, 88 S. Ct. 1994 (1968)).

to utilize Title I, the Commission would be imposing regulations on thousands of providers – ISPs and other information service providers – who would suddenly find an unprecedented expansion of FCC regulation altering their reasonable business assumptions about the nature of their enterprises.

The NPRM suggests that perhaps the Commission should impose universal service contribution obligations on broadband information service providers, presumably pursuant to Title I authority.[36] AOL Time Warner recognizes the importance of ensuring that the FCC fulfill its statutory goals such as a specific and reliable universal service mechanism.[37] As a consumer-oriented company, AOL Time Warner is particularly cognizant of the need to ensure that services are ubiquitous and affordable and that consumers in high-cost and rural areas have the same access to essential telecommunications services as those that reside in more populated areas. The services of AOL and other ISPs enable consumers who live outside of major metropolitan areas to participate in a larger community to which they would not otherwise have access. Yet, there is no need for the FCC to alter radically its regulatory framework or statutory interpretations to achieve universal service goals. The Commission has already addressed how telecommunications carriers are to calculate universal service contributions when they offer both information services and telecommunications services.[38] While the FCC may decide to alter its present contribution methodology,[39] it should not veer from its statutory mandate that provides for universal service contributions on a mandatory basis from telecommunications carriers and on a permissive basis from other providers of telecommunications as the public interest may

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[36] NPRM at ¶¶ 75-78.

[37] 47 U.S.C. § 254.

[38] *See* CPE/Enhanced Services Unbundling Order, 16 FCC Rcd 7418 at ¶¶ 47-54.

[39] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43 (rel. Feb. 26, 2002).

dictate.[40] Indeed, while the FCC may be concerned about how evolving services may impact universal services,[41] there is no evidence whatsoever that it should therefore extend these obligations beyond the statutorily-enumerated entities to information service providers. Moreover, as the Commission has recognized, information service providers already contribute indirectly to universal service by virtue of their use of wireline telecommunications.[42]

The core issue is not how to create a regulatory scheme that shifts costs and burdens from one industry to another, or how to serve certain interests at the expense of others, but rather, how to serve best the national interests in vibrant economic growth and diverse social, political and educational well-being. If we are to ensure that the information-based, technology rich future fulfills its promise, public policy must continue to support innovation, growth and diversity.

II. WIRELINE BROADBAND TRANSMISSION SERVICES PROVIDED TO ISPs HAVE BEEN PROPERLY TREATED AS TELECOMMUNICATIONS SERVICES

The high-speed wireline services used today by ISPs – both affiliated and unaffiliated – have been appropriately treated as telecommunications services. Nothing has changed that should cause the FCC to reverse this well-established legal conclusion. Moreover, it remains the optimal path to enhancing consumer welfare and enabling the FCC to fulfill its public interest mandate. As such, the FCC should continue to ensure that ISPs are afforded just, reasonable and non-discriminatory access to wireline transmission services because so doing will enhance consumer welfare, diversity and choice.

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[40] 47 U.S.C. § 254(d); *See also Report to Congress*, 13 FCC Rcd 11501 at ¶ 16; *Federal-State Board Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 5318, at ¶¶ 276-77 (1997) ("Universal Service Fourth Reconsideration Order").

[41] *See e.g.*, NPRM at ¶ 66.

[42] *See Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579*, Report to Congress, 13 FCC Rcd 11810 at ¶ 22 (1998).

With respect to transmission services, the Communications Act reflects the origin of telecommunications law in common carrier regulation.[43] The notion of common carriage in communications law derives directly from the regulatory framework that governs physical transport infrastructure and entails a general obligation to conduct operations on an open, non-discriminatory basis.[44] While the Communications Act defines both the terms "common carrier"[45] and "telecommunications carrier,"[46] the FCC has stated that it uses these terms as functional equivalents.[47] Under the 1996 Act, "telecommunications," such as used by information services, may or may not involve common carriage.[48] Entities that provide telecommunications are generally treated as "common carriers" only to the extent they provide "telecommunications services," which specifically incorporate the core feature of "telecommunications for a fee directly to the public, or to such classes of users as to be

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[43] *See, e.g., NARUC I*, 525 F.2d at 640-43, discussing the quasi-public character of "holding out" to potential users and a system whereby "customers transmit intelligence of their own design and choosing." *See also NARUC II*, 533 F.2d 601, 609-610 (D.C. Cir. 1976). Under this precedent, the Commission properly regulates an entity as a common [telecommunications] carrier if: "(1) there is or should be any legal compulsion to serve the public indifferently; or (2) there are reasons implicit in the nature of the service to expect that the entity will in fact hold itself out indifferently to the eligible user public." *Hughes Communications,* 12 FCC Rcd at 7539, ¶ 17 (1997) (citing *NARUC I*). *See also Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, RM-9328, Notice of Proposed Rulemaking, 14 FCC Rcd 4843, 4875 ¶ 74 (1999). In fact, a relevant inquiry is to determine "whether there will be any legal compulsion thus to serve indifferently." *NARUC I*, 525 F.2d at 642. The Commission also has indicated it will rely on the "'realities of the service provided.'" *Hughes Communications,*12 FCC Rcd at 7539, ¶ 17 (citing *Domestic/International Satellite Consolidation Order*, 11 FCC Rcd 2429, 2436 (1996)). In interpreting these decisions, the FCC has stated that "where the Commission can reasonably conclude that some or all such [Title II] requirements are useful or necessary because of the individual characteristics of a firm or market environment, and imposes some or all of these obligations, then we believe an entity *is* a common carrier." *In the Matter of Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Further Notice of Proposed Rulemaking, 84 FCC 2d 445, 463-65, ¶¶ 54a-54e (1981) ("*Competitive Carrier FNPRM*") (*emphasis in original*).

[44] *See NARUC I*, 525 F.2d at 640-42.

[45] 47 U.S.C. § 153(10); "The term 'common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier."

[46] *See* n.12, *supra*, for definition of "telecommunications carrier."

[47] *See AT&T Submarine Systems, Inc.*, File No. S-C-L-94-006, Memorandum Opinion and Order, 13 FCC Rcd 21585, 21587-88, ¶ 6 (1998) (citing *Cable & Wireless*, 12 FCC Rcd 8516, 8521-22 (1997)), *aff'd sub nom. Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

effectively available to the public"[49] and to the extent "there is or should be a legal compulsion to serve the public indifferently."[50] To classify the services at issue here, then, the FCC must assess how the wireline broadband services are in fact offered to and used by ISPs.

Given the manner by which wireline carrier broadband services have evolved, and the representations by the carriers offering such services, there can be no question about whether the transmission services at issue are telecommunications services subject to non-discrimination and other bedrock common carrier requirements. Not only has the FCC consistently so found, the facts and circumstances surrounding these offerings logically support only this conclusion.

First, the Commission itself has held repeatedly that the wholesale DSL services used by ISPs are "telecommunications services" and it cannot and should not now define away this substantial precedent. Wireline carriers offer DSL "telecommunications services" to the public, and have refined their service offerings to assist ISPs in their ability to use DSL as an input for broadband Internet access services.[51] From the start, the FCC correctly concluded that DSL transmission services are "telecommunications services," and that the Commission has "ample authority" under Title II of the Communications Act to investigate and act on potential

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[48] *See e.g.*, Universal Service Fourth Reconsideration Order, 13 FCC Rcd 5318, at ¶ 191.

[49] 47 U.S.C. § 153 (46).

[50] *See Hughes Communications*, 12 FCC Rcd at 7539 ¶17 (citing *NARUC I*).

[51] After exploring the potential of xDSL services for video and other uses, *see Telephone Company – Cable Television; Cross-Ownership Rules, Sections 63.54-63.58*, CC Docket No. 87-266, Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300, at ¶¶ 6-7, 13-14, 18-19 (1991), carriers decided to offer their services to enable ISPs to "provide their end user customers with high-speed access to the Internet." *In the Matter of GTE Telephone Operating Cos.*, Memorandum Opinion and Order, CC Dkt. No. 98-79, FCC 98-292, ¶¶ 1, 8 (rel. Oct. 30, 1998) (noting the introduction of GTE ADSL service through federal access tariff amendment, GTOC Transmittal No. 1148) ("*GTE DSL Order*"). *See also, e.g., Advanced Services Second R & O* at ¶ 6 (describing how Bell Atlantic had filed with the Commission, shortly before adoption of the *Advanced Services Second R & O*, Bell Atlantic Transmittal No. 1138, Bell Atlantic Tariff F.C.C. No. 1, revising Bell Atlantic's ADSL tariffs to include volume and term discount plans, pursuant to which some ISPs purchased the service, combined it with their Internet service, and offered the combined high-speed Internet service directly to end-user subscribers).

anticompetitive activities.[52] Again, in its *Advanced Services MO&O*, the Commission held unequivocally that advanced services, including xDSL, offered by incumbent LECs "are telecommunications services," rejecting incumbent carrier arguments that somehow the "advanced" nature of the services transforms them into a different type of service.[53]

In fact, the FCC has addressed the very question the NPRM is now poised to address, stating that when wireline carriers "self-provision" by providing the DSL services "that underlie the BOCs' own information services," there is a "continuing obligation to offer competing ISPs nondiscriminatory access to the *telecommunications services* utilized by the BOC information services."[54] Likewise, in 1999, the FCC again repeated that "bulk DSL services sold to Internet Service Providers . . . are telecommunications services, and as such, incumbent LECs must continue to comply with basic common carrier obligations with respect to these services.[55] Finally, just last year, the Commission stated once more unequivocally that DSL services provided to affiliated and unaffiliated ISPs are properly subject to the FCC's Title II authority, stating:

> The internet service providers require ADSL service to offer competitive internet access service. We take this issue seriously, and note that all carriers have a firm obligation under section 202 of the Act to not discriminate in their provision of transmission service to competitive internet or other enhanced service providers. . . . In addition, we would view any such discrimination in pricing, terms, or conditions that favor one competitive

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[52] *See, e.g., GTE DSL Order,*¶ ¶ 20, 32 and n. 111 ("We have ample authority under the Act to conduct an investigation to determine whether rates for DSL services are just and reasonable," citing 47 U.S.C. §§ 204-205).

[53] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd. 24011, ¶¶ 35-36 (1998) ("*Advanced Services MO&O*"); Order on Remand, 15 FCC Rcd 385, ¶¶ 9, 18-22 (1999).

[54] *Advanced Services MO&O*, 13 FCC Rcd 24011 at ¶ 37.

[55] *Advanced Services Second R&O* at ¶ 21. These obligations include: providing such DSL services upon reasonable request; on just, reasonable, and nondiscriminatory terms; and in accordance with all applicable tariffing requirements. Moreover, for ILECs that are the former Bell Operating Companies ("BOCs"), there is a basic obligation to ensure "equal access" to unaffiliated ISPs to the functions and features used by affiliated information service providers. *See* Computer III, 104 FCC 2d at 1035-37 ¶¶ 147-50; *Advanced Services MO&O*, 13 FCC Rcd 24011 at ¶ 102 (seeking comment on whether competing ISPs will have the ability to offer service to customers of an incumbent LEC's advanced services affiliate).

enhanced service provider over another or the carrier, itself, to be an unreasonable practice under section 201(b) of the Act. [56]

The reason the FCC has repeatedly held that the DSL transmission services used by ISPs – whether affiliated or not – are "telecommunications services" is that the DSL service offerings plainly meet the statutory definition of a "telecommunications service."[57] Since 1998, wireline carriers have chosen to make their DSL services available to ISPs, together with the required ATM and Frame Relay services, according to their evolving business goals.[58] These DSL transmission services are – contrary to suggestions in the NPRM – pure "transmission" services between the end-user's premises (e.g., DSL modem) and the DSLAM at the incumbent carrier's serving wire center (and as required by the incumbent carriers, between the DSLAM and the DSL aggregation point).[59] As AOL Time Warner has explained in a companion proceeding considering broadband issues, regardless of how some incumbent local exchange carriers ("LECs") now seek to characterize their services, wholesale "DSL service" offered to ISPs is not the same as broadband Internet access information service offered to consumers.[60]

In addition, incumbent carrier DSL services are unquestionably offered "directly to the public," having been made available for almost 5 years indiscriminately to all ISPs, network

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[56] *See, e.g.,* CPE/Enhanced Services Unbundling Order, 16 FCC Rcd 7418 at ¶ 48.

[57] 47 U.S.C. § 153(46).

[58] *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719, ¶¶ 79-80 (2001); Separate Statement of Commissioner Kathleen Q. Abernathy at 1-2 n.2 (*citing* SBC Arkansas/Missouri Section 271 Application at 51-52).

[59] *See e.g.,* BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1 at § 7, ¶ 7.2.17; Qwest Corporation Tariff F.C.C. No. 1 at § 8, ¶ 8.4.1; SBC Advanced Solutions, Inc. Tariff F.C.C. No. 1 at § 6 ("A DSL Line is the physical facility between the Company's DSLAM . . . and the Network Interface Device (NID) located at the End User Premises"); Verizon Telephone Companies Tariff F.C.C. No. 20 at § 5, Part III ("Data traffic generated by a Company-provided or Customer-provided modem is transported to the Verizon Infospeed DSL Connection Point").

[60] Dominant/Non-Dominant NPRM, Reply Comments of AOL Time Warner Inc., filed April 22, 2002. Thus, in considering appropriate obligations in this proceeding, the relevant question is not whether carriers "have market power in the provision of wireline broadband Internet access service," NPRM at ¶ 46, but rather their status insofar as they offer wireline *transmission* services.

providers, and carriers.[61] The carriers' own characterizations of their services are consistent with their "generally available" nature.[62] Finally, the services are offered "for a fee" that the carriers themselves have established, often changing it according to their needs. That the carrier-affiliated ISP also may use these DSL "telecommunications services" as an input for their own information services does not change the nature of the offering. Significantly, the wireline carriers offering these services have generally understood the nature of their service offerings and have accurately described them for what they are.[63] Moreover, even now, the FCC has implicitly recognized that DSL transmission services are telecommunications services. In a companion proceeding designed to review regulation for incumbent LECs, the services are characterized as "Incumbent LEC Broadband Telecommunications Services."[64]

For these reasons, the FCC must continue to enforce core Title II obligations (which require just, reasonable and non-discriminatory rates, terms and conditions), subject to a showing

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[61] NPRM ¶ 26. Certainly there is no question that ISPs, for purposes of the statutory definition, constitute "the public" or within a class "of users as to be effectively available to the public." Precedent supports a conclusion that where transmission is offered to a "significantly restricted class of users," there may still be an "indiscriminate" offering to serve all. *See* State of Iowa v. FCC, 218 F.3d 756 (D.C. Cir. 2000) (provider may make common carriage offering to even restricted class of users, where it does so indiscriminately); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, AAD/USB File No. 98-37, Order on Remand, 16 FCC Rcd 571 (2000).

[62] *See, e.g.*, SBC Advanced Solutions Inc., Tariff F.C.C. No. 1 at § 6 ("Wholesale DSL Transport Service is intended primarily for Internet Service Providers (ISPs), but may be purchased by any information service provider or carrier to connect to their End User for the purposes of providing to that End User a retail service that includes high speed DSL"). In addition, Verizon has a special website devoted to wholesale services for ISPs, which has direct links to an answer center to answer questions regarding "any product or service"; "ISP Resources," including tariff information for ISP customers; and sales material to view or download. *See* http://www.verizon.com/ispmarkets . *See also Advanced Services Second R & O* at ¶ 17 n.39 (noting that the Bell Atlantic tariff did not restrict the purchase of bulk DSL services to ISPs); Letter from Susanne Guyer, Assistant Vice President, Federal Regulatory, Bell Atlantic to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket Nos. 98-147 & 99-201 (filed Oct. 18, 1999) (distinguishing Bell Atlantic's wholesale offering of ADSL to ISPs and competing carriers from its "Customer Specific Arrangements").

[63] See e.g., Further Reply Comments of SBC Communications Inc., CC Dkt. Nos. 95-20, 98-10, at 8 (April 30, 2001) ("the critical point is that Internet ISPs in SBC's service areas have access to DSL services on par with that experienced by the SBC-affiliated Internet ISPs"); Comments of Qwest Corporation, CC Dkt. Nos. 95-20, 98-10, at ii (April 16, 2001) ("The services which Qwest offers to enhanced service providers . . . are used by Qwest's own enhanced service operations in accordance with Qwest's filed comparably efficient interconnection plans"); Comments of BellSouth Corporation, CC Dkt. No.s 95-20, 98-10, at 3 (April 16, 2001) ("All capabilities used by BellSouth's own enhanced service operations are available to independent ISPs on a non-discriminatory basis. Specifically, BellSouth's DSL services are available on a non-discriminatory basis to all ISPs pursuant to tariff").

[64] *See* Dominant/Non-Dominant NPRM.

under Section 214 that discontinuance or impairment of these services is in the public interest.[65] As explained in greater detail below, as applied to wireline carriers, these requirements maximize consumer welfare by fostering diversity and choice for broadband services, stimulating innovation, service improvements and demand. At the same time, wireline carriers should remain free to compete in information service businesses, offering consumers what they believe is the most attractive unregulated mix of enhanced services, applications and features.[66] But, to ensure that these carriers do not compete unfairly in their unregulated information services, they must continue to be required to offer on a non-discriminatory basis to competing ISPs the same access to wholesale transmission and related features (including Operations Support Systems, service functions, repair, etc.) as they use themselves.[67] Indeed, the genesis of and need for many of these requirements is the monopoly environment in which telecommunications services were historically offered and the need to safeguard the public from anti-competitive abuses.[68] Given that ISPs have built their businesses in legitimate reliance on

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[65] This is especially important as to incumbent wireline carriers, that today provide almost all wholesale broadband transmission services. *See* Reply Comments of AOL Time Warner, Dominant/Non-Dominant NPRM, filed April 22, 2002.

[66] At the same time, the Commission should recognize that while cable operators also offer information services, they do not necessarily offer telecommunications services. While the instant NPRM addresses wireline infrastructure regulation, issues regarding cable will be addressed in another proceeding. *See In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable And Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities,* GN Docket 00-185, CS Docket 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, Rel. March 15, 2002 ("Cable Broadband Ruling and NPRM").

[67] As discussed in Section III, *infra,*, AOL agrees that the particular implementation of this requirement could vary (e.g., from precise rules to reporting obligations to particular enforcement mechanisms) to meet more effectively broadband service realities.

[68] *See, e.g., Competitive Carrier FNPRM*, 84 FCC 2d at 447 ¶ 6 (the regulatory scheme in Title II "was primarily enacted to constrain the exercise of substantial market power possessed by firms providing communications services in 1934"); *id.* at 459, ¶¶ 42-43 ("In sum, Title II can readily be viewed as a logical and consistent regulatory scheme directed at the problems associated with monopoly control or market power. . . . Congress intended to create a regulatory system to constrain the abuses market power portends. . . . In 1934, when it considered and ultimately adopted the Communications Act, Congress faced an industry that was largely absent of competitive forces"). *See also Telephone Company – Cable Television; Cross-Ownership Rules, Sections 63.54-63.58*, CC Docket No. 87-266, Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5849, 5864, ¶ 76 and n.59 (1988) ("the government's substantial interests in preventing anticompetitive abuses by telephone carriers that possess monopoly power and in achieving and maintaining a competitive environment for broadband communications that

access to wireline infrastructure, the public interest underscores the need for retaining these reasonable access requirements.[69]

III. WIRELINE CARRIER TRANSMISSION SERVICES SHOULD CONTINUE TO BE MADE AVAILABLE TO ISPs ON A JUST, REASONABLE AND NON-DISCRIMINATORY BASIS

A. The FCC's Rules and Policies Have Been Successful for Consumers, Service Providers and Carriers

There is no question that there exists an abundance of information services that are accessed via the wireline infrastructure, well beyond voice mail, e-mail, teletext, and the limited examples of services that were foreseeable decades ago when the FCC first entertained the notion of carriers entering the new world of "data communications."[70] Today, services include diverse applications and features, including Internet access; interactive messaging; enhanced processing functions; telecommuting; the development of user-driven content for sports, headlines, and news; banking; and airline reservation and similar services.[71] And, just as the

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should lead to the introduction of new and different services to the public . . . are embodied in Title II of the Communications Act. Title II gives the FCC broad authority to regulate interstate common carriers in order, among other things, to prevent them from using their monopoly power to discriminate unreasonably among different customers in terms of service availability, price, terms or quality, or to charge them unjust or unreasonable rates"). The need to apply stringently Title II regulation to incumbent wireline carriers persists today in order to protect competitors and consumers from anti-competitive abuses by incumbent carriers. *See, e.g.*, Letter of EarthLink, Inc., Competitive Telecommunications Association, U.S. Internet Service Providers Alliance, and Virginia ISP Alliance to Chairman Michael Powell, Federal Communications Commission (filed Sep. 17, 2001) ("EarthLink Sep. 17, 2001 Letter") (objecting to numerous provisions of SBC-ASI Advanced Services Tariff FCC No. 1, and describing how "SBC's illegal tariff imposes significant harm on ISPs and their customers").

[69] ISPs legitimately have relied upon FCC policies in their investment decisions. *See, e.g., National Ass'n of Independent Television Producers and Distributors v. FCC*, 502 F.2d 249, 254 (2d Cir. 1974) (reasonable reliance upon FCC rule is entitled to weight).

[70] In Computer II, the Commission referred to a comparable service as "mail box" service. *See* Computer II, 77 FCC 2d at 421 ¶ 97. *See also id.*, 77 FCC 2d at 427, ¶ 111 n.43 (describing the offering of "teletext and viewdata type services . . . in conjunction with other store and forward message service applications"). *See also* NPRM at ¶ 13; *Report to Congress*, 13 FCC Rcd 11501 at ¶¶ 75-82; OPP Working Paper No. 31 at 11. These services include a range of communications-dependent services including Internet online services, voice mail, voice information services, directory search capabilities, Web hosting, telemessaging, credit card validation, FTP file transfer, Usenet newsreaders, Telnet applications, alarm monitoring, electronic publishing, and others.

[71] There have even been services that provide the World Wide Web to visually-impaired users via computer generated speech over the phone; digital video recording/replay services (like TiVo and ReplayTV); digital "picture