

W. Scott Randolph  
Director – Regulatory Affairs



Verizon Communications  
1300 I Street  
Suite 500E  
Washington, DC 20005

Phone: 202 515-2530  
Fax: 202 336-7922  
srandolph@verizon.com

September 30, 2002

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**Ex Parte: CC Docket Nos. 01-337, 01-338, 96-98, 98-147, and 02-33**

Dear Ms. Dortch:

On September 30, 2002, Dee May, Ed Shakin, Augie Trinchese, and the undersigned met with Rob Tanner, Jeremy Miller, Aaron Goldberger, Daniel Shiman, Elizabeth Yockus, Cathy Carpino, Ben Childers, Claudia Pabo, and Mike Engel of the Wireline Competition Bureau and Shanti Gupta of the Office of Engineering and Technology. The purpose of the meeting was to discuss the removal of any unbundling and collocation obligations on facilities used to provide mass-market broadband services and the combined actions the Commission should take in its Broadband and UNE proceedings to promote broadband deployment and investment. The attached material was used in the meeting.

We also discussed the manner in which broadband services are provided to small businesses. According to a recent study by the Yankee Group, cable modem services were being provided to approximately 560,000 businesses in 2001, increasing to 675,000 businesses in 2002. "2002 Broadband Subscriber Forecast", Yankee Group, August 23, 2002, Exhibit 5.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this letter are being submitted to the Office of the Secretary. Please associate this notification with the record in the proceedings indicated above. If you have any questions regarding this matter, please call me at (202) 515-2530.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Scott Randolph".

W. Scott Randolph

Attachment

cc: Rob Tanner  
Jeremy Miller  
Aaron Goldberger  
Daniel Shiman  
Cathy Carpino  
Claudia Pabo  
Mike Engel  
Ben Childers  
Elizabeth Yockus  
Shanti Gupta



# *UNE Triennial Review*



## *Mass Market Broadband*



September 30, 2002

# “Principles that guide our actions...”

As Chairman Powell articulated:

“...sound regulatory policy should, where appropriate, harmonize regulatory rights and obligations that are attached to the provision of similarly-situated services across different technological platforms.”

- Chairman Powell, US Chamber of Commerce, April 30, 2002

# The statutory requirements...

- ✓ The Supreme Court and the DC Circuit have made clear that the Commission' s impairment analysis must take into account all competitive alternatives, regardless of platform.
- ✓ “ The Commission cannot consistent with the statute, blind itself to the availability of elements outside the incumbent' s network.” *AT&T v. Iowa Utilities Board*, 525 U.S. at 389.
- ✓ “ The Commission' s own findings . . . repeatedly confirm both the robust competition and the dominance of cable, in the broadband market.” *USTA v. FCC*, 290 F.3d at 428.
- ✓ In the case of mass market broadband, the DC Circuit understood that the Supreme Court mandate requires that the Commission take into account the “ competitive context” of multi-platform competition. *Id.* at 429.

## The facts lead to these conclusions:

- ✓ The pervasive deployment of alternative broadband facilities and substantial inter-modal competition demonstrate that there can be no basis for a finding of impairment.
- ✓ CLECs are not impaired without access to ILEC packet switching, loops, fiber and collocation to remote terminals.
- ✓ Unbundling deters facilities based competition, and has a stifling effect on investment and innovation.

# ILECs are not the dominant providers

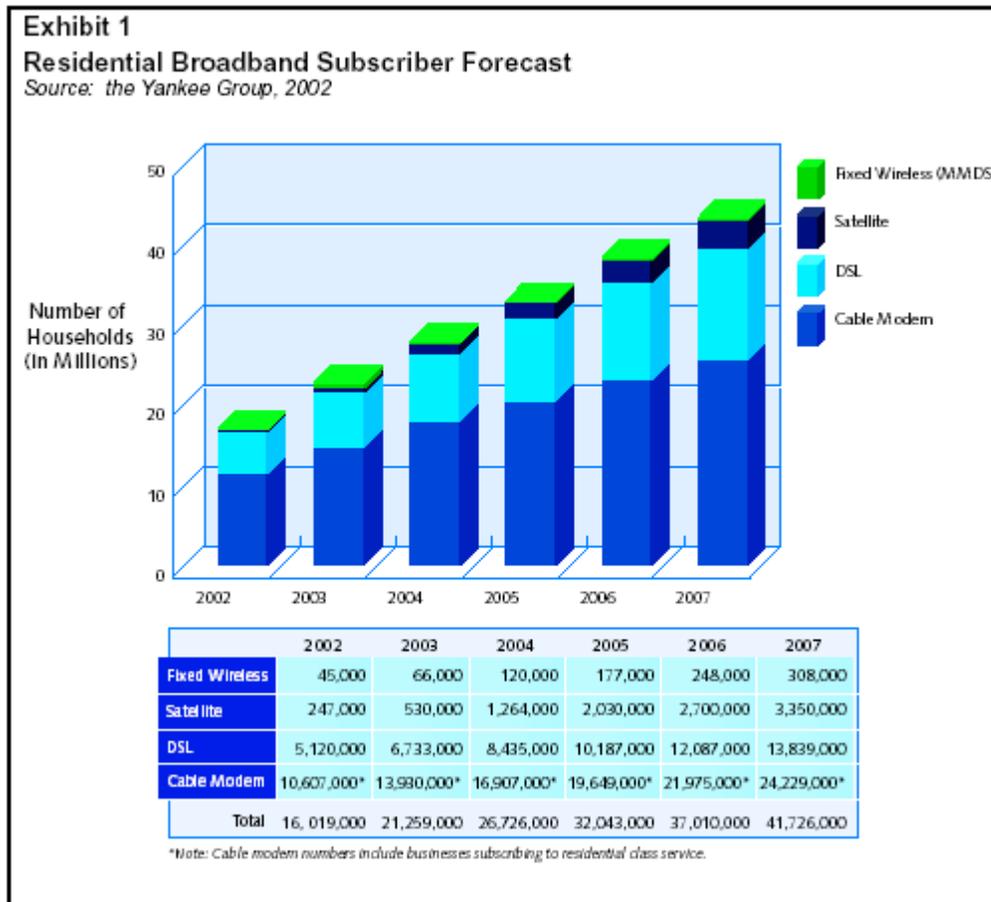
- ✓ Cable companies dominate the mass market.
  - Cable upgraded networks pass roughly 81 million homes with 7.5 million subscribers.
  - ILEC DSL is available to only 51.5 million homes and has only 3.3 million subscribers.
  
- ✓ Cable' s dominance of broadband limits choice:
  - 38% of households have access to only cable broadband services.
  - 33% have access to both cable and DSL.
  - 10% have access to DSL only.

# Robust competition in broadband

- ✓ Four different broadband technologies are available to consumers and businesses

<b>Availability of Broadband Services</b>			
	<b>2001</b>	<b>2002</b>	<b>2003</b>
Cable Modem			
McKinsey & Co. /JP Morgan	77%	81%	84%
Yankee Group	66%	77%	81%
DSL			
McKinsey & Co./JP Morgan	51%	60%	64%
Yankee Group	45%	54%	62%
Satellite	50 states, covering over 90% of U.S. households		
Fixed Wireless	3%	n/a	n/a
<i>Source: 2001 UNE Fact Report, p. IV-19</i>			

# Cable will continue to dominate



- “ ..the Yankee Group expects cable modem to continue as the dominant consumer broadband access platform for a number of years even beyond the forecast period.”

*Residential Broadband: Cable Modem Remains King, Yankee Group, April 2002*

## And cable targets small business

- ✓ Cable MSOs have been quietly serving small-sized businesses for years under residential offerings.
  - Cable MSOs are now creating business units that will aggressively pursue this opportunity.
  - Cable business offerings will directly compete for potential small business customers.

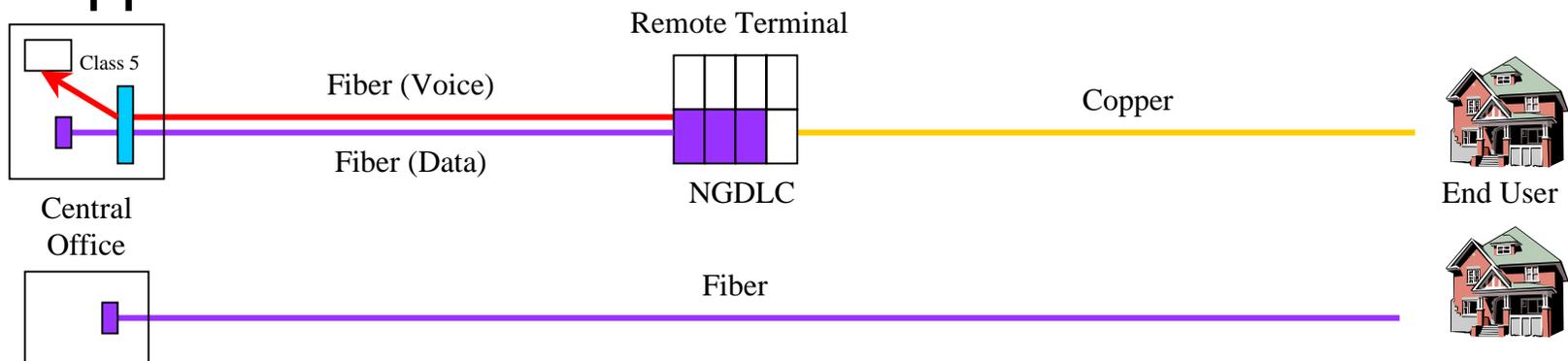
From Yankee BB Access technologies 8/23/02

# And there are other options

- ✓ Satellite broadband services
  - Available in all 50 states – already have 140,000 subscribers.
- ✓ Terrestrial fixed wireless technologies
  - Reach 55% of the population - 90% by the end of 2004
- ✓ Other near-term sources:
  - “Wi-Fi”
    - “Everything you assumed about telecommunications is about to change. Large wired wireless telephone companies will be replaced by micro-operators, millions of which can be woven into a global fabric of broadband connectivity .” *Nicholas Negroponte, October 2002, Wired Magazine*
  - Powerline communications
  - Third generation mobile wireless

# More ILEC Investment is needed

- ✓ Cable has rapidly upgraded its networks
  - Over 70% of cable homes passed have access to high speed capabilities.
  - Enables bundling of voice, high-speed data, video.
- ✓ For ILECs, expanded deployment of fiber optics and next generation networks are needed to support emerging new applications.



# Unbundling impedes deployment

- ✓ Unbundling increases long-term costs in a price-sensitive market:
  - Precludes deployment of efficient network
  - Increases operational costs
  - Limits ability to offer competitive products at competitive prices
  - Diminishes return on investment

# Unbundling deters investment

- ✓ Current regulatory pricing regimes are inconsistent with the new realities of the telecommunication industry:
  - “ FCC rules on the unbundling of local networks and the pricing of unbundled network elements have a negative impact on infrastructure investment.”
  - “ Government price mandates have drained profits from the sector’ s strong players by handicapping the ILECs in the interest of subsidizing new entrants.”
  - “ Without the ability to earn a decent return on investment, the ILECs will be forced to pull back the resources they have committed to the sector.”
  - “ Without such investment, the equipment suppliers and solutions providers that create innovation will be unable to sustain their research-and-development efforts.”

*“New Realities in Telecommunications and the Need for Sound Public Policies”,  
Nortel Networks, September 24, 2002.*

# Benefits of facilities competition

- ✓ Increasing competition through facilities ownership and voluntary business arrangements versus unbundling regulation is important for several reasons:
  - Reduces the need for persistent regulatory intervention.
  - Permits competition-shaped character of the broadband service and industry to be discerned.
  - Promotes diversity.
  - Avoids deterring competitors from investing in their open infrastructure.
  - Removes a disincentive to new investment by incumbents.
  - Avoids costs and complications of coordination between incumbents and competitors.
  - Facilitates technical optimization of total bandwidth.

# The path to broadband deployment

- ✓ The Commission' s broadband proceedings can work in harmony to encourage investment.
- ✓ Title I proceeding:
  - Reconfirm that broadband transport with Internet-access is a Title I information service.
  - Determine that the stand-alone transport may be offered on a non-common carrier basis.
- ✓ Non-dominant proceeding:
  - ILECs that choose to offer services on a common carrier basis are non-dominant.

# The path to broadband deployment

- ✓ The broadband issues in the triennial review need not await the resolution of the other broadband dockets.
  
- ✓ Triennial review:
  - Competing carriers are not impaired in the provision of broadband services.
  - No unbundling obligations for all broadband, including packet-switching, line sharing, deep fiber loops.
  - Remove obligations for collocation at RTs.

# A uniform national policy is needed

- ✓ A uniform national policy is necessary to create incentives for investment and promotion of truly competitive markets.
- ✓ Sec.251(d) appoints the FCC as the regulatory body that must make the determination of a limiting standard to determine what elements should be unbundled.
  - Under the Act, the FCC must make clear that further state unbundling is not “consistent with the requirements” of that section.