

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

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	GN Docket No. 04-54
Capability to All Americans in a Reasonable	)	
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

**REPLY COMMENTS OF SBC COMMUNICATIONS INC.**

**I. INTRODUCTION AND SUMMARY**

SBC Communications, Inc. (SBC) submits the following reply comments in response to the Commission’s fourth inquiry concerning the deployment of broadband to all Americans pursuant to section 706 of the Telecommunications Act of 1996.<sup>1</sup> In our initial comments, we explained in detail that the market for broadband services in the U.S. is highly competitive, providing consumers with a variety of broadband service options, in terms of both speed and price.<sup>2</sup> We further explained that, notwithstanding this competition, cable companies still dominate the overall U.S. market for broadband services.<sup>3</sup> We also showed that, despite their second-place status in the market, incumbent telephone companies unfairly remain the most

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<sup>1</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 04-54, Notice of Inquiry, FCC 04-55 (released March 17, 2004) (*Fourth 706 Inquiry*). In these comments, SBC uses the term “broadband” to refer collectively to both “high-speed services” and “advanced services” as the Commission defines those terms, unless otherwise specified. In addition, because the Commission has traditionally focused on residential and small business customers in its section 706 inquiries, SBC’s comments are directed primarily to addressing issues that affect those market segments, unless otherwise noted.

<sup>2</sup> SBC Comments at 7-11.

<sup>3</sup> SBC Comments at 10-11.

heavily regulated broadband providers.<sup>4</sup> Finally, we argued that the surest way for the Commission to satisfy its Congressionally-mandated obligation to encourage investment in broadband networks is to level the regulatory playing field between cable companies and telephone companies by expeditiously completing several long-pending wireline broadband proceedings in a fair and balanced manner.<sup>5</sup>

While there is strong support in the record for these positions -- especially the assertions that the broadband market is competitive<sup>6</sup> -- AT&T and MCI attempt to spin a much more pessimistic story about the status of the broadband marketplace, which quite predictably casts incumbent telephone companies as villains and suggests that ever more regulation is needed to incent the deployment of competitively-priced broadband services. But while such a story may make good copy for a public relations campaign, it has absolutely no basis in reality.

As discussed below, SBC has been aggressively responding to competitive pressure from cable companies and other broadband providers by, among other things, *lowering* the price of our DSL Internet access service and boosting broadband subscribership.<sup>7</sup> This is precisely the type of competitive response that Congress, the President, and the Commission have been clamoring for. Thus, the Commission should resist the call from some commenters for a retreat to monopoly-era regulation of incumbent telephone company broadband services, which would only stifle the competition that is beginning to flourish in the broadband marketplace. Instead, the Commission should seek to foster even greater competition by fully and finally resolving its

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<sup>4</sup> SBC Comments at 11-15.

<sup>5</sup> SBC Comments at 16-22.

<sup>6</sup> See Comcast Comments at 6-13; United States Telecom Association Comments at 4-5; Verizon Comments at 6-16, Exhibit A, Broadband Competition: Recent Developments March 2004 (*Broadband Competition Update*).

<sup>7</sup> SBC's separate affiliate, SBCIS, is the entity that actually provides DSL Internet access service to consumers. SBCIS purchases wholesale DSL transport from Advanced Services, Inc. (ASI), which is SBC's advanced services separate affiliate. For the sake of simplicity, however, we refer to SBC as the provider of DSL Internet access service in these comments.

pending wireline broadband proceedings and providing the regulatory stability needed to encourage investment in the next generation of broadband networks and services.

**II. NOTWITHSTANDING THE CLAIMS OF SOME COMMENTERS, THE U.S. BROADBAND MARKETPLACE IS HIGHLY COMPETITIVE.**

Despite substantial evidence of broadband competition in the record, some commenters assert that there is no significant competition in today's broadband marketplace and there are few viable prospects for competition in the near future. AT&T, for example, argues that there is a "lack of pervasive broadband competition."<sup>8</sup> And MCI goes so far as to claim, without any factual support, that the Commission's decisions have "eliminated broadband competition."<sup>9</sup>

But as SBC and others showed in their initial comments, these pessimistic claims cannot be reconciled with marketplace realities. In fact, the market for broadband services is intensely competitive. Cable companies and telephone companies are fiercely competing with each other in a heated race to sign-up broadband subscribers as quickly as possible.<sup>10</sup> That competition has helped drive the wider availability of higher-speed services at lower prices.<sup>11</sup> At the same time, there is also a wide array of other broadband offerings available in the market today. As Verizon and Comcast demonstrate in great detail in their comments, a variety of providers are currently offering intermodal broadband services, including satellite broadband service, fixed wireless broadband service, mobile wireless broadband service, and powerline broadband service.<sup>12</sup> And these are not just trials, but actual commercial deployments as well.

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<sup>8</sup> AT&T Comments at 9.

<sup>9</sup> MCI Comments at 11.

<sup>10</sup> See *Broadband Competition Update* at 1-8 (providing a detailed analysis of cable company and telephone company broadband offerings); Comcast Comments at 2-9.

<sup>11</sup> See *Broadband Competition Update* at 1-8.

<sup>12</sup> See *Broadband Competition Update* at 13-24; Comcast Comments at 9-14.

Moreover, AT&T and MCI themselves are offering broadband services to millions of Americans. Indeed, just this month, AT&T touted its “aggressive nationwide rollout” of DSL service and the success it has had in entering new markets through its line splitting arrangement with Covad.<sup>13</sup> Under this arrangement, “AT&T bundles its DSL Service, provided in part through the Covad network, with AT&T local and long-distance services, offering consumers the advantage of a single, convenient telecommunications package. Launched in early 2003, AT&T now offers bundled DSL in a total of 26 states.”<sup>14</sup> A similar line splitting arrangement with Covad enables MCI “to provide high-speed DSL Internet service for MCI’s Neighborhood HiSpeed and Business Complete HiSpeed service. . . . Through this partnership, MCI will have access to Covad’s nationwide network, which covers over 1,800 central offices, serving more than 40 million homes and businesses in 96 of the top Metropolitan Statistical Areas (MSAs) in 35 states.”<sup>15</sup> Thus, despite some unduly pessimistic claims to the contrary, competition has firmly taken root in the broadband marketplace and it is beginning to flourish.

### **III. THE COMMISSION SHOULD REJECT CLAIMS THAT THE BROADBAND MARKET IS IN NEED OF MORE REGULATION.**

Despite intense competition in the broadband marketplace as described above, AT&T, MCI and others claim that the marketplace is nonetheless in danger of succumbing to some form of “opoly” -- monopoly, duopoly, or oligopoly -- though they cannot seem to settle on which one.<sup>16</sup> At the root of these assertions is the wholly unsubstantiated claim that cable companies

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<sup>13</sup> *AT&T Adds DSL Service to Communications Bundle in California*, AT&T News Release (May 11, 2004).

<sup>14</sup> *Covad Partners with AT&T to Offer Bundled DSL and Voice Services in California*, Covad News Release (May 11, 2004).

<sup>15</sup> *Covad Extends Partnership with MCI*, Covad News Release (Sept. 2003).

<sup>16</sup> See AT&T Comments at 8 (discussing the “duopoly of cable modem and ILEC-provided DSL service”); MCI Comments at 9 (discussing the “BOC’s Monopoly Over the Last Mile”); MCI Comments at 11 (describing the “existing BOC/cable broadband duopoly”); MTCO comments at 2 (discussing the “oligopoly” that will result from the Commission’s unbundling rules). MCI’s claim that the BOCs have a “monopoly” over the last mile is particularly puzzling given MCI’s recognition that cable companies (which maintain complete control over their last

and telephone companies will collude “to maintain prices above competitive levels.”<sup>17</sup> And while these commenters are apparently unable to agree on the exact diagnosis of the purported disease that afflicts the broadband market, they are not shy about suggesting a drastic cure: more regulation.

But when subjected to the slightest scrutiny, it becomes quite obvious that these self-serving assertions about an alleged market failure are not supported by any factual evidence. Rather, they are based wholly on speculation on what might or could theoretically occur at some indeterminate point in the future. Indeed, AT&T postulates that cable providers and telephone companies “are *likely* to have the incentive” to behave in anti-competitive behavior because “firms in a duopoly *tend*” to do so.<sup>18</sup> MCI similarly hypothesizes that failing to regulate the alleged cable-telco duopoly carries a risk that consumers will lack choices “in the end.”<sup>19</sup> MTCO muses in the abstract about the “higher prices, fewer choices, and poorer service quality” that can occur in an oligopoly.<sup>20</sup>

Entirely absent from this sky-is-falling rhetoric, however, is any factual support to show that the market is failing or consumers are being harmed.<sup>21</sup> Indeed, the only attempt at such factual support comes from AT&T. In what can be charitably described as a blatant misrepresentation, AT&T wrongly suggests that SBC has been abusing its alleged “market

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mile connections) have a nearly two-to-one advantage in broadband subscribers over their BOC competitors. *See* MCI comments at 6-7.

<sup>17</sup> *See* AT&T Comments at 9.

<sup>18</sup> AT&T Comments at 9 (emphasis added).

<sup>19</sup> MCI Comments at iv.

<sup>20</sup> MTCO Comments at 2.

<sup>21</sup> To the contrary, Sprint points to actual evidence -- Verizon’s recent decision to offer higher DSL speeds without raising prices -- to support its claim that the “Commission should not be concerned about ILECs failing to respond to the vigorous competition to provide advanced services. . . . Clearly, the market is working efficiently and effectively.” Sprint Comments at 3-4.

power” to raise the price of its DSL Internet access service.<sup>22</sup> But exactly the opposite is true -- in response to competitive pressures in the broadband marketplace, SBC has *repeatedly lowered* the price of its DSL Internet access service. In fact, when SBC first introduced its entry-level DSL Internet access service in 1998, the service was priced at \$49.95 per month.<sup>23</sup> By mid-2003, SBC had lowered the price of that service to \$34.95 per month. And today, SBC’s entry-level DSL Internet access service is *just \$26.95 per month*.<sup>24</sup> In addition, SBC also offers a higher-speed DSL Internet access service (ranging from 1.5 Mbps to 3.0 Mbps downstream and 384 Kbps upstream) for \$39.99 per month, which is several dollars *less expensive* than many typical cable modem service offerings.<sup>25</sup> Thus, AT&T’s suggestion that SBC is engaging in any type of behavior that “denies today’s consumers the benefits of choice, innovation, and lower prices for broadband” is simply preposterous.<sup>26</sup>

Indeed, affordable broadband services, like those offered by SBC, are precisely what policymakers have been clamoring for since the passage of the 1996 Act. The whole purpose of the Act is to “provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information

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<sup>22</sup> AT&T Comments at 9.

<sup>23</sup> This pricing information relates to the lowest promotional rate offered for SBC’s entry-level DSL service with speeds ranging from 384 Kbps to 1.5 Mbps downstream and 128 Kbps upstream.

<sup>24</sup> The current rate of \$26.95 per month is available when subscribers sign-up for one year of service and purchase the service online or as part of a qualifying bundle of services.

<sup>25</sup> The current rate of \$39.99 per month is available when subscribers sign-up for one year of service and purchase the service online or as part of a qualifying bundle of services.

<sup>26</sup> AT&T Comments at 9. As evidence of SBC’s alleged price increases, AT&T refers to an *ex parte* letter from its outside counsel in another proceeding, which in turn references an analyst report from Goldman Sachs. See Letter from David L. Lawson, Sidley, Austin, Brown & Wood, to Marlene Dortch, FCC, CC Docket Nos. 01-337, 02-33 at 8 n.31 (Feb. 20, 2004). But that analyst report explicitly states that, although SBC changed the pricing of one DSL offer from \$26.95 to \$29.95, SBC introduced a new DSL offer at the pre-existing \$26.95 rate. Thus, while not every change in the price of SBC’s DSL Internet access service has been downward since 1998, the critical and undisputable fact here is that SBC has cut the price of that service by nearly 50 percent over the last five years. AT&T’s failure to acknowledge this fact is, at best, disingenuous.

technologies and services to all Americans . . . .”<sup>27</sup> And Congress specifically urged the Commission to ensure that its policies fostered the availability of “[a]ccess to advanced telecommunications and information services” in “all regions of the Nation,” and that such services are “quality services” offered at “affordable rates.”<sup>28</sup>

Further, Chairman Powell has stated that “[u]niversal and affordable access to broadband is vital to the health and future growth of our economy.”<sup>29</sup> Commissioner Abernathy has noted the importance of the Commission’s efforts to “push competitive, affordable, and universal broadband Internet access to the masses . . . .”<sup>30</sup> And Commissioner Adelstein has observed that “Congress intended all Americans to have access to telecommunications service, and eventually advanced services, at reasonable and affordable rates.”<sup>31</sup>

If there was any doubt about the importance of affordable broadband, the President put that to rest when he called for our country to “be aggressive about the expansion of broadband.”<sup>32</sup> He recognized that “[i]n order to make sure the economy grows, we must bring the promise of broadband technology to millions of Americans.”<sup>33</sup> The President has

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<sup>27</sup> See Joint Explanatory Statement of the Committee of the Conference, S. Rep. No. 230, 104<sup>th</sup> Congress, 2d Sess. 1, 113 (1996).

<sup>28</sup> 47 U.S.C. § 254(b)(1), (2).

<sup>29</sup> *Powell Comments on President’s Call for Universal, Affordable Broadband*, FCC News Release (March 26, 2004).

<sup>30</sup> *Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses*, FCC 03-335, Separate Statement of Commissioner Kathleen Q. Abernathy (released Feb. 12, 2004).

<sup>31</sup> *Commissioner Adelstein Supports Active FCC Role in Promoting Deployment of Basic and Advanced Telecommunications Services to Rural America*, FCC Press Release (Aug. 6, 2003).

<sup>32</sup> *Remarks by the President at the 21st Century High Tech Forum*, Washington, DC (June 13, 2002).

<sup>33</sup> *Remarks by the President at the Economic Forum Plenary Session*, Waco Texas (Aug. 13, 2002).

emphasized, however, that in order for broadband to reach “all corners of the country, it must be affordable.”<sup>34</sup>

But just as SBC and other ILECs are fulfilling the goals of the 1996 Act and making affordable broadband service available to millions of Americans, some commenters are suggesting that the Commission should turn back the clock and re-impose unnecessary and affirmatively harmful regulations on our broadband services. In their comments, they ask the Commission to reverse various portions of the broadband relief provided in the *Triennial Review Order*.<sup>35</sup> While they focus on different aspects of that order, their comments share a common theme: more regulation is better.<sup>36</sup> For the most part, the Commission wisely rejected this heavy-handed approach for broadband in the *Triennial Review Order*, and the Commission should not waste its time or scarce resources revisiting the deregulatory aspects of that decision in this proceeding.<sup>37</sup>

Rather, the Commission should continue forward with its efforts to develop a “policy and regulatory framework [that] will work to foster investment and innovation in [broadband] networks by limiting regulatory uncertainty and unnecessary or unduly burdensome regulatory costs.”<sup>38</sup> Specifically, the Commission should move as expeditiously as possible to finish the

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<sup>34</sup> *Remarks by the President at the American Association of Community Colleges Annual Convention*, Minneapolis, Minnesota (April 26, 2004).

<sup>35</sup> *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*).

<sup>36</sup> *See* Covad Comments at 9-11; MTCO Comments at 7-9. *See also* AT&T Comments at 15-16 (criticizing the *Triennial Review Order*); MCI Comments at 9-11 (criticizing the *Triennial Review Order*).

<sup>37</sup> Moreover, in affirming the relief from broadband unbundling provided in the Commission’s *Triennial Review Order*, the D.C. Circuit recognized that there was “very strong record evidence” of “robust intermodal competition from cable providers.” *USTA v. FCC*, 359 F.3d 554, 582 (D.C. Cir. 2004). In fact, the court stated that “even if all CLECs were driven from the broadband market, mass market consumers will still have the benefits of competition between cable providers and ILECs.” *Id.*

<sup>38</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 ¶ 5 (2002) (*Wireline Broadband NPRM*).

following wireline broadband proceedings in a manner that satisfies Congress's mandate to "remove barriers to infrastructure investment"<sup>39</sup> and encourages the deployment of broadband networks and services: (1) the *Wireline Broadband NPRM*; (2) the *Non-Dominance NPRM*;<sup>40</sup> and (3) the pending petitions for reconsideration of the *Triennial Review Order*.<sup>41</sup> The swift and fair resolution of these proceedings is absolutely critical to creating a stable regulatory environment that will serve as a foundation for the deployment of the next generation of broadband services across the nation.

Respectfully Submitted,

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<sup>39</sup> See Section 706(a) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996), reproduced in the notes under 47 U.S.C. § 157.

<sup>40</sup> *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) (*Non-Dominance NPRM*).

<sup>41</sup> See SBC Comments at 16-22; Nortel Comments at 8 ("Speedy resolution of these proceedings would be a major positive step in accelerating the deployment of advanced telecommunications capability to all Americans, thereby meeting the objectives of the 1996 Act.").