

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

In the Matter of)	
)	
Verizon Telephone Companies' Petition for a)	
Declaratory Ruling, or Alternatively, Interim)	
Waiver and Conditional Petition for)	WC Docket No. 04-242
Forbearance Under 47 U.S.C. § 160(c) with)	
regard to Broadband Services Provided via)	
Fiber to the Premises)	
)	

COMMENTS OF CIENA CORPORATION

The Broadband Group of CIENA Corporation (“CIENA”), formerly Catena Networks, Inc., hereby comments in support of the request of the Verizon telephone companies (“Verizon”) seeking a declaratory ruling that until the Commission completes its ongoing proceedings on broadband regulation, Verizon’s fiber-to-the-premise (“FTTP”) broadband service will be accorded the same regulatory treatment as cable modem service.¹ In its petitions, Verizon explains that it requires prompt Commission action because it has started to deploy next-generation FTTP and intends to provide voice, video and high-speed data services to customers over these new facilities in the next few months. As explained below, CIENA encourages the Commission to act quickly and favorably on Verizon’s requests in order to eliminate potential disincentives for the deployment of advanced broadband services that can be provided via FTTP.

CIENA provides a broad range of telecommunications products, including broadband access technologies. Thus, CIENA has urged the Commission to facilitate the

¹ *Public Notice*, DA 04-2006, July 1, 2004. In the alternative, Verizon requests forbearance from those regulations.

deployment of advanced services and technologies, consistent with Congress' directive in Section 706 of the Telecommunications Act of 1996.² In the context of the *Triennial Review Order*, the Commission acknowledged the importance of such a policy, and as a result eliminated the unbundling obligation for incumbent carriers' broadband facilities when fiber is deployed deep into the network.³

The *Triennial Review Order*'s elimination of broadband unbundling obligations has already demonstrated positive results – CIENA has enjoyed a significant “uptick” in ILEC broadband access technology investment and a greater interest in some of CIENA's products, and general industry reports indicate that other broadband telecom equipment and fiber optic manufacturers have also experienced increased demand for broadband equipment, reflecting the increased investments by the ILECs following the *Triennial Review Order*.⁴ Not surprisingly, the marketplace has responded affirmatively to the reduction in uncertainty as a result of the release of the *Triennial Review Order*, as well as that decision's removal of some of the broadband investment disincentives as a result

² E.g., Comments of Catena Networks, Inc. in CC Docket No. 02-33, filed May 3, 2002; *Ex Parte* Notice of Catena Networks, Inc. in CC Docket Nos. 01-338 and 02-33, filed June 13, 2003.

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (Report and Order on Remand and Further Notice of Proposed Rulemaking), 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*”) at ¶¶ 60, 173-178, 213, 234, 236, 242-244, 253, 278, 288, 290, 295 and 541.

⁴ E.g., Adams Harkness & Hill, Communications Technology Industry Report – “The Return of a Networked World: Key Trends in Communications Equipment” (October 9, 2003)(http://www.ahh.com/files_and_pdfs/press_rel_pdfs/commtech%20industry%2010-9-03.pdf) at pp. 3, 5 and 6. CIENA's Broadband Access Group has experienced significant revenue growth since the adoption of the *Triennial Review Order*.

of the reduction in fiber and packet switching unbundling.⁵ Moreover, several of the incumbent carriers have announced plans to expand their broadband deployment

⁵ CIENA's competitors have experienced significant growth in valuation as a result of the adoption of the *Triennial Review Order*. The following charts show the growth in valuation for Alcatel and Corning (compared to the S&P 500) since the adoption of the *Triennial Review Order* in February, 2003:



Alcatel vs. S&P 500



Corning vs. S&P 500

significantly. For example, Verizon stated that it would invest \$2 billion over the next two years to expand fiber in its landline networks.⁶ More recently, SBC announced that, pending final clarity on applicable regulatory requirements and successful completion of neighborhood-level trials, it is intending to invest \$4 billion to \$6 billion over five years to deploy fiber deeper into its network and make advanced services available to millions of additional customers.⁷

As Verizon explains in its requests, however, the potential asymmetric regulatory burdens imposed on incumbent carriers' provision of broadband services creates disincentives to investment, thus threatening to stall or reverse the increased deployment of advanced fiber optic services spurred by the *Triennial Review Order*. Moreover, there is no rational basis for applying burdensome regulations on the broadband services provided by Verizon when the Commission has already determined not to apply these obligations on cable carriers, which presently have the majority of multi-channel video and high-speed data customers.⁸ The Commission has already tentatively concluded with

⁶ See, e.g., *News Release* "Verizon Outlines Leadership Strategy for Broadband Era; Announces Major New 3G Mobile Data and Wireline IP Network Expansions," January 8, 2004.

⁷ See, e.g., *News Release*, "SBC Communications Announces Advances In Initiative To Develop IP-Based Residential Network For Integrated Video, Internet, VoIP Services," June 22, 2004.

⁸ E.g., *Triennial Review Order* at ¶ 292. According to the Commission's latest statistics, as of the end of 2003, DSL service accounted for 33.7% of the high speed lines, while cable modem service accounted for 58.3%. "High Speed Services for Internet Access: Status as of December 31, 2003," Industry Analysis and Technology Division, Wireline Competition Bureau, June 2004 at Chart 2. Moreover, those latest statistics show that cable modem's "lead" is growing – in June 2003 there were 6.009 million more cable modem lines than DSL lines; by December 2003 that gap had grown to 6.936 million lines. *Id.*

respect to cable companies that consumers do not need the protections of Title II regulation.⁹ Verizon's incumbency for voice services provides it with no unfair advantages with respect to its cable or other competitors,¹⁰ and the Commission's price cap regulation ensures that cross-subsidization is not a legitimate concern. The imposition of Title II regulation on Verizon's broadband services is thus unnecessary for the protection of consumers or competition, but would dampen advanced services investment incentives, contrary to Section 706.

CONCLUSION

CIENA believes the Commission should be encouraging the kind of broadband investments Verizon is contemplating – it should not be maintaining or erecting roadblocks in its path. The asymmetric regulatory burden imposed on Verizon's broadband offerings is such an obstruction that needs to be removed. For all of these

⁹ *Cable Modem Declaratory Ruling*, 17 FCC Rcd 4798 (2002) at ¶ 95.

¹⁰ Indeed, the development of voice over Internet protocol (VoIP) services allows broadband competitors readily to provide voice services with little additional investment, thus providing them with the same (if not better) opportunities to offer their subscribers a "bundle" of voice, video and high-speed data services. *See also* "RBOCs and Cable Wage Turf War," *Network World Fusion*, August 18, 2003: "A driving factor in our success continues to be our bundling strategy," quoting Cox Communications President and CEO Jim Robbins: "Today nearly one-third of our customers buy multiple services;" and *see also* testimony of Mr. Brian Roberts before the Senate Commerce Committee, "Telecommunications Policy Review: A View from Industry," May 12, 2004 hearing: "As we look ahead, I think we can agree that the next great transforming technology is Internet protocol, or 'IP,' which gives us the ability to convert all forms of video, voice and data into data packets, and move them over our networks with greater efficiency and less cost."

