

Before the
Federal Communications Commission
Washington, DC 20554

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

Comments of Alcatel North America

Pursuant to Section 1.415 and 1.419 of the rules of the Federal Communications Commission (“Commission”) and the Commission’s Public Notice of July 1, 2004, Alcatel North America (“Alcatel”) hereby files Comments to both Verizon’s Declaratory Petition¹ and its Forbearance Petition.² Alcatel files these comments in support of the regulatory relief and cable modem parity sought by Verizon in the Declaratory Petition and the Forbearance Petition. Alcatel also urges the Commission to expeditiously move forward on several broadband dockets and petitions pending for months and years.

Alcatel is a global communications supplier that provides equipment and solutions to wireline, wireless, submarine cable, and satellite service providers, as well as enterprise customers. Alcatel has operations in over 130 countries, with substantial

¹ *Petition of the Verizon Telephone Companies for Declaratory Ruling, or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises*, WC Docket No. 04-242 (filed June 28, 2004) (“Declaratory Petition”).

² *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S. C. §160(c) with Regard to Broadband Services Provided via Fiber to the Premises*, WC Docket No. 04-242 (filed June 28, 2004) (“Forebearance Petition”).

operations in western Europe, North America, and Asia, particularly China. In the broadband access market, Alcatel leads the North American and Global marketplace with over 45 million DSL lines shipped, and a product portfolio that includes DSLAMs, the Litespan Next Generation Digital Loop Carrier, and a Fiber to the User passive optical networking solution that is being deployed by several providers in the U.S., including SBC, EATEL, and several municipalities.

In its February 2003 decision in the Triennial Review Order,³ the Commission took a historic step in exempting most broadband network elements, including packet switching, the packet features and functions of hybrid loops, and fiber loops from the legacy network unbundling obligations of §251.⁴ This decision ultimately represented the Commission's first network unbundling decision pursuant to §251 that was sustained on appeal. Moreover, exempting ILEC broadband equipment from network unbundling and pricing rules has had a demonstrable impact on investment; for example, Alcatel's internal data shows that the DSL net adds for the four major ILECs has increased over 47% when comparing the time before the Triennial Review Order and the time period afterwards.⁵

Nevertheless, regulatory disparity between telco and cable modem remains a problem and regulatory relief for broadband networks is necessary in order to create a more investment-friendly atmosphere. Alcatel, on its own and as a member of the Telecommunications Industry Association and as a founding member of the High Tech

³ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("Triennial Review Order"), *vacated in part and remanded*, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

⁴ 47 U.S.C. §251.

⁵ See, June 3, 2004, Letter from Michael Quigley, Alcatel, to Chairman Michael Powell, FCC. Filed as an ex parte in CC 01-338.

Broadband Coalition, has filed extensive comments in the Triennial Review Proceeding, the Wireline Broadband proceeding,⁶ the Cable Modem proceeding,⁷ and the ILEC Nondominance Proceeding.⁸ The common theme throughout these comments is that the Commission must recognize that broadband services are provided over competing platforms and regulatory discrimination between competing platforms will cause harm to the market and slow investment.⁹

The Commission now has an opportunity to build on its historic policies in the Triennial Review Order and the *USTA II* decision by providing the regulatory relief requested in both this docket as well as the other pending broadband dockets. The Commission, as a priority, should grant the relief requested in Verizon's *Declaratory Petition* and *Forbearance Petition*, which would create a regulatory environment for Verizon's FTTU services on par with cable modem service. Legacy tariffing and nondiscrimination policies that were developed when telephone facilities were the exclusive access to consumer's homes are inapplicable in the present marketplace where cable modem possesses a majority market share for wireline broadband access, and terrestrial and satellite broadband wireless products offer competitive pressure and alternatives for consumers. The persuasiveness of Verizon's arguments in its Declaratory

⁶ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations for Broadband Providers*, CC Docket Nos. 02-33, 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) ("Wireline Broadband NPRM").

⁷ Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to Internet over Cable and Other Facilities*, 17 FCC Rcd 4798 (2002), vacated in part, *Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9th Cir. 2003), petitions for certiorari pending.

⁸ *Review of Regulatory Requirements for Incumbent LEC Broadband Services; SBC Petition for Expedited Ruling That it is Nondominant in its Provision of Advanced Services and for Forbearance From Dominant Carrier Regulation of These Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC 01-360, 16 FCC Rcd 22745 (rel. Dec. 20, 2001).

⁹ *Comments of Alcatel USA, Inc.*, CC 02-33 (filed May 3, 2002).

Petition and Forebearance Petition is greatly enhanced due to the imminent FTTU deployment in Keller, TX, and nine other states by the end of 2004.¹⁰

Contemporaneous to moving on the Verizon petitions, the Commission should move forward and complete its pending broadband dockets, most notably the petitions for reconsideration in the Triennial Review Order proceeding and the Wireline Broadband proceeding. In the Triennial, the Commission should focus on eliminating any residual broadband network element unbundling obligations based on §271 of the Act that otherwise have been exempt from such an obligation under a §251 analysis,¹¹ provide FTTU regulatory treatment for FTTCurb loops that offer equivalent services, and provide fiber loops to multi-dwelling units the same regulatory status as fiber loops serving individual residences and other “mass market” customers.¹²

In the Wireline Broadband proceeding the Commission should move forward with a Report & Order that provides tariffing and pricing relief for ILEC broadband services, regardless of the 9th Circuit decision or potential petitions for certiorari in *Brand X*. The Commission can employ several alternative legal theories to create this regulatory parity, including adopting its Title One Information Services tentative conclusion, allowing for the private carriage of these services, and through its Section 10 forbearance authority.¹³

Alcatel appreciates the Commission’s attention and work towards creating regulatory parity among major wireline broadband providers. The regulatory relief provided in the Triennial Review Order has contributed to a significant increase in

¹⁰ *Declaratory Petition*, at 2.

¹¹ In the 271/251 matter, the Commission may either act on the petitions for reconsideration or pursuant to the recent decision of the U.S. Court of Appeals for the D.C. Circuit. *Verizon v. FCC*, No. 03-1396, (D.C. Cir. Jul. 16, 2004).

¹² See, *Comments of the High Tech Broadband Coalition on Petitions for Clarification and/or Partial Reconsideration*, CC 01-338 (Nov. 6, 2003). See Also, *HTBC Ex Parte*, CC 01-338 (May 20, 2004); *HTBC Ex Parte*, CC 01-338 (June 4, 2004).

broadband investment; granting Verizon's petitions and moving forward on the petitions for reconsideration to the Triennial Review Order and the Wireline Broadband proceeding will build on these achievements.

Respectfully Submitted,

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¹³ See, *HTBC Ex Parte*, CC 02-33 (Jan. 14, 2004).