

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

In the Matters 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 Docket Nos. 95-20, 98-10
	)	
	)	

**PETITION FOR LIMITED RECONSIDERATION OF  
TITLE I BROADBAND ORDER**

Michael E. Glover  
*Of Counsel*

Edward Shakin  
William H. Johnson

1515 North Courthouse Road  
Suite 500  
Arlington, VA 22201  
(703) 351-3060  
will.h.johnson@verizon.com

November 16, 2005

Attorneys for the  
Verizon telephone companies

## CONTENTS

<b>I. Introduction and Summary .....</b>	<b>1</b>
<b>II. Background.....</b>	<b>3</b>
<b>III. The Commission Should Encourage Deployment of All Innovative and Competitive Broadband Services, Including ATM and Frame Relay, by Allowing Them to Be Offered on a Private Carriage Basis Under Title I, Even When Those Services Are Not Used for Internet Access .....</b>	<b>7</b>
<b>A. Broadband Transmission Services Are Not the Type of Services     Warranting Common Carrier Treatment.....</b>	<b>7</b>
<b>B. The Robust Competition for Broadband Transmission Services     Demonstrates the Lack of Any Need for Common Carrier Regulation. ....</b>	<b>13</b>
<b>Conclusion.....</b>	<b>16</b>

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

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

**PETITION FOR LIMITED RECONSIDERATION OF  
TITLE I BROADBAND ORDER**

**I. Introduction and Summary.**

In its recent *Title I Broadband Order*,<sup>1</sup> the Commission took an important pro-competitive and pro-consumer step by recognizing that wireline facilities-based providers may sell broadband Internet access services as information services under Title I of the Communications Act, and that the underlying broadband transmission services, when offered by local telephone companies, are no longer subject to the common carrier strictures of Title II or to the *Computer Inquiry* rules unless the provider so chooses. Accordingly, telephone companies are now able to provide stand-alone broadband transmission services that are used as inputs to Internet access services through commercially negotiated private carriage agreements under Title I of the Act. As the Commission stated, “the appropriate framework for wireline Internet access

---

<sup>1</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 ( 2005) (“*Title I Broadband Order*”).

service, including its transmission component, is one that is eligible for a lighter regulatory touch.” *Title I Broadband Order* ¶ 3. Verizon<sup>2</sup> fully supports this outcome that will allow it to compete more effectively with other broadband Internet access providers, like the cable companies, who have long operated outside of Title II.

At the same time, Verizon urges the Commission to reconsider one important aspect of its recent order – its decision not to extend Title I private carriage treatment to stand-alone broadband transmission services, such as the ATM and Frame Relay services that Verizon sells primarily to large enterprise customers, to the extent that those services are not used for Internet access.<sup>3</sup> The question is whether the lighter regulatory treatment extended by the order to broadband transmission services when used for Internet access should also apply when those same services are not offered as part of an Internet access service.

Verizon documented in this proceeding that these broadband transmission services, whether or not offered together with Internet access, are sold in a competitive environment, thus eliminating any need for common carrier regulation of any providers. Verizon also showed that it and other local telephone companies remain subject to intrusive common carrier regulation when they sell these competitive broadband transmission services, even while all other

---

<sup>2</sup> The Verizon companies (“Verizon”) are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

<sup>3</sup> In addition to any broadband transmission services used to access the Internet, the broadband transmission services entitled to Title I treatment should include all transmission services that use a packet-switched or successor technology. Examples include Digital Subscriber Line (DSL) services (while most DSL services are offered as part of an Internet access service, that is not always the case), Frame Relay services, Asynchronous Transfer Mode (ATM) services, gigabit Ethernet services, and optical services. This definition does not include TDM-based special access services, although, as the Commission has recognized, packetized transmission services should not be denied relief simply because of any “TDM handoff” required in order for these services to be compatible with legacy customer premises equipment. *See Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 20293, ¶ 21 (2004).

competitors have been immune from such regulation. For example, when other carriers provide these broadband transmission services to enterprise customers for purposes other than Internet access, they have been allowed to operate largely free from regulation even if they are nominally subject to Title II. By regulating local telephone companies as common carriers, but leaving their competitors essentially unregulated, the current regulatory scheme has made it more difficult for these providers to compete successfully and efficiently and has created disincentives to new investment that hinder deployment of new facilities and services.

Consistent with the record in this proceeding and with the Commission's precedent recognizing that Title I treatment is appropriate for services such as those at issue here over which the providers lack market power, the Commission should reconsider its order in this one regard and hold that all broadband transmission services, including specifically stand-alone broadband transmission services, are subject only to minimal regulation under Title I rather than the unnecessary strictures of Title II common carrier regulation, even when those services are not used for Internet access. Doing so would allow providers like Verizon additional flexibility to craft broadband services that better meet customers' needs, thus spurring additional investment in and competition for these already competitive services.

## **II. Background.**

The Commission initiated this proceeding in February 2002, seeking to determine the appropriate regulatory classification for wireline broadband services.<sup>4</sup> In doing so, the Commission appropriately recognized that “[t]he widespread deployment of broadband infrastructure has become the central communications policy objective of the day,” and that

---

<sup>4</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 FCC Rcd 3019 (2002) (“*NPRM*”).

“broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market.” *NPRM* ¶¶ 1, 5. The Commission then tentatively concluded that “the provision of wireline broadband Internet access service is an information service,” and that “the transmission component of retail wireline broadband Internet access services provided over an entity’s own facilities is ‘telecommunications’ and not a ‘telecommunications service.’” *Id.* ¶ 17. In addition, the Commission sought comment on the appropriate regulatory classification when any “entity provides only broadband transmission on a stand-alone basis, without a broadband Internet access service.” *Id.* ¶ 26. The Commission asked commenters to “address what the appropriate statutory classification of broadband transmission should be when it is not coupled with the Internet access component. . . . [and] the circumstances under which owners of transmission facilities offer broadband transmission on a private carriage basis.” *Id.*

In response to the *NPRM*, Verizon supported the Commission’s conclusion that wireline Internet access services constitute information services that should be subject to a minimal regulatory regime under Title I, similar to the Commission’s previous determination with respect to cable modem service – the dominant broadband service sold to mass market consumers.<sup>5</sup>

Verizon – again with the support of other parties<sup>6</sup> – further argued that the Commission’s

---

<sup>5</sup> See, e.g., Comments of Verizon, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33 (filed May 3, 2002) (“*Verizon Comments*”).

<sup>6</sup> See, e.g., Letter from Cronan O’Connell, Qwest, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 7 (filed Aug. 8, 2003) (arguing that Qwest and other local telephone companies lack market power over ATM and Frame Relay, and should not be subject to common carrier regulation); Letter from Cronan O’Connell, Qwest, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 13-18 (filed May 23, 2003); Letter from Whit Jordan, BellSouth, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 7 & 16 (filed Oct. 16, 2002); Letter from Jonathan J. Boynton, SBC, to Marlene H. Dortch,

broadband policy objectives, the mandate of Section 706 to encourage broadband deployment, and relevant Commission precedent all warranted the same private carriage treatment for other broadband transmission services even when not used for Internet access services, including packetized broadband transmission services like ATM and Frame Relay.<sup>7</sup> Throughout the course of this proceeding, Verizon repeatedly explained both the propriety and necessity for treating these broadband transmission services as private carriage offerings under Title I, and provided the factual record to support such a determination.<sup>8</sup> Among other things, Verizon demonstrated that these services are innovative services being offered in a highly competitive market to sophisticated customers – precisely the type of services that the Commission previously has recognized should be subject to only minimal regulation under Title I, rather than misplaced, inefficient and unnecessary common carrier regulation. Moreover, Verizon explained that common carrier regulation is particularly troubling with respect to broadband transmission services sold to enterprise customers because these customers – who frequently have regional, national or international communications needs – demand integrated services and customized

---

FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 9-11 (filed Sept. 26, 2002).

<sup>7</sup> *Verizon Comments* at 9-23.

<sup>8</sup> See, e.g., *Verizon Comments*, at 9-23; Reply Comments of Verizon, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 11-44 (filed July 1, 2002); Broadband Fact Report, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 26-31 (filed May 3, 2002) (Attachment A to *Verizon Comments*) (“2002 Broadband Fact Report”); Letter from Ann D. Berkowitz, Verizon, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33 (filed June 25, 2003) (“Enterprise Market Presentation”); Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 17-19 (filed Nov. 13, 2003); Broadband Fact Report, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 24-26 (filed March 26, 2004) (“March 2004 Broadband Fact Report”).

solutions that are difficult to satisfy under common carrier regulation, particularly when the regulations of multiple jurisdictions apply.<sup>9</sup>

Despite the robust record in this proceeding demonstrating that broadband transmission services like ATM and Frame Relay should be subject to Title I regardless of whether they are used for Internet access, the Commission's *Title I Broadband Order* declined to so hold. Instead, the Commission concluded that "other wireline broadband services, such as stand-alone ATM service, frame relay, gigabit Ethernet service, and other high-capacity special access services" lack the "information-processing capabilities" of broadband Internet access services. *Title I Broadband Order* ¶ 9. While that may mean that these stand-alone transmission services are not being used as an input to Internet access or another information service, the order says nothing about whether these stand-alone services can or should be treated as private carriage offerings under Title I. Instead, the order skips past this critical issue and simply assumes these stand-alone services would be offered as "telecommunications services . . . subject to current Title II requirements." *Id.* The Commission did acknowledge, however, that these exact same broadband transmission services should not be subjected to common carriage regulation when they are provided either as a "wholesale input to ISPs," or are offered as part of an Internet access service. *See id.* ¶¶ 103-104. The Commission acknowledged that "the current record does not support a finding of compulsion that the transmission component o[f] wireline broadband Internet access service is a telecommunications service as to the end user." *Id.* ¶ 106. As we demonstrated previously, and address again below, the same is true when these services are offered on a stand-alone basis and not as part of an Internet access service.

---

<sup>9</sup> *Enterprise Market Presentation* at 7 & 11.

**III. The Commission Should Encourage Deployment of All Innovative and Competitive Broadband Services, Including ATM and Frame Relay, by Allowing Them to Be Offered on a Private Carriage Basis under Title I, Even When Those Services Are Not Used for Internet Access.**

The record in this proceeding clearly demonstrates that all wireline broadband services – and not merely broadband Internet access services – are subject to intense competition and that providers should be permitted to offer these services on a private carriage basis under Title I. And this is certainly true for broadband transmission services like ATM and Frame Relay that are sold to sophisticated enterprise customers, primarily by providers who have long been exempt from Title II’s most onerous requirements. Moreover, the Commission’s recent order already recognizes that these same services may be offered on a private carriage basis when used as an input to an integrated Internet access service. Accordingly, Verizon respectfully urges the Commission to reconsider its order in this limited regard and to hold that stand-alone broadband transmission services may be offered on a private carriage basis under Title I, regardless of whether they are sold as part of an Internet access service.

**A. Broadband Transmission Services Are Not the Type of Services Warranting Common Carrier Treatment.**

The competitive nature of broadband transmission services compels the conclusion that these services may be sold on a private carriage basis under Title I. The Act defines a “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.”<sup>10</sup> The Commission previously has found that the definition of telecommunications services “is intended to encompass only telecommunications provided on a common carrier basis” – that is,

---

<sup>10</sup> 47 U.S.C. § 153(46).

telecommunications offered not simply to the public, but “indifferently [to] all potential users.”<sup>11</sup> However, unless a provider chooses to offer services in that manner, then precedent also recognizes that common carriage treatment cannot be imposed absent the presence of market power with respect to such services – something local telephone companies and other providers alike lack with respect to stand-alone broadband transmission services.

Consistent with this two-step approach, the Commission has made it clear that compelled Title II treatment is justified only to prevent an abuse of market power. Where competition restrains market power, the Commission can and must let market forces, rather than Title II regulations, guide the development of the marketplace.<sup>12</sup> In fact, where such competition is present, the Commission has often either mandated that services or facilities be taken outside of Title II completely, or allowed telecommunications providers to choose whether to offer service on a common- or non-common-carrier basis, particularly when those services are innovative or involve emerging technologies.<sup>13</sup>

The Commission’s *Title I Broadband Order* reaffirms the two-step approach to determining whether common carrier regulation applies, correctly recognizing that broadband

---

<sup>11</sup> *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 9177-78, ¶ 785 (1997).

<sup>12</sup> *See AT&T Submarine Systems, Inc.*, 13 FCC Rcd 21585, ¶ 9 (1998) *aff’d*, *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999); *see also, e.g., Cox Cable Communications, Inc., Commline, Inc. and Cox DTS, Inc.*, 1 FCC Rcd 561, ¶ 5 (1986) (finding no “compelling reason” to impose common carrier regulation on a carrier that had “little or no market power”); *see generally* Michael Kende, Office of Plans and Policy, FCC, *The Digital Handshake: Connecting Internet Backbones* at 12 (OPP Working Paper No. 32, Sept. 2000) (common carrier regulation “serve[s] to protect against anti-competitive behavior by telecommunications providers with market power. In markets where competition can act in place of regulation as the means to protect consumers from the exercise of market power, the Commission has long chosen to abstain from imposing regulation.”).

<sup>13</sup> *See, e.g., Computer & Communications Indus. Assoc. v. FCC*, 693 F.2d 198, 208-09 (D.C. Cir. 1982) (“*CCLA*”) (affirming the reasonableness of the Commission’s determination that enhanced services and customer premises equipment were outside the scope of Title II); *see also Philadelphia Television Broad. Co. v. FCC*, 359 F.2d 282 (D.C. Cir. 1966).

transmission services that are used as inputs to an Internet access service fall under Title I. In this context, the Commission noted that “the transmission component of wireline broadband Internet access service is a telecommunications service only if one of two conditions is met: the entity that provides the transmission voluntarily undertakes to provide it as a telecommunications service; or the Commission mandates, in the exercise of our ancillary jurisdiction under Title I, that it be offered as a telecommunications service.” *Title I Broadband Order* ¶ 103. The D.C. Circuit has followed the same approach, holding that common carrier regulation may only apply where a provider’s market power justifies the imposition of such intrusive requirements, unless the provider itself chooses to operate as a common carrier.<sup>14</sup>

Other, well-established judicial precedent further confirms the Commission’s authority to permit private carriage treatment where a provider lacks market power. As the D.C. Circuit confirmed when it upheld the Commission’s landmark decision to classify information services and CPE under Title I, “the latitude accorded the Commission by Congress in dealing with new communications technology includes the discretion to forbear from Title II regulation” by classifying services as non-common carriage under Title I.<sup>15</sup> In that decision, the court approved the FCC’s use of private carriage in place of common carriage and held that “the public interest touchstone of the Communications Act, beyond question, permits the FCC to allow the marketplace to substitute for direct Commission regulation in appropriate circumstances.”<sup>16</sup>

---

<sup>14</sup> *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (“The key factor is that the operator offer indiscriminate service to whatever public its service may legally and practically be of use. In making this determination, we must inquire, first, whether there will be any legal compulsion thus to serve indifferently, and if not, second, whether there are reasons implicit in the nature of [the service’s] operations to expect an indifferent holding out to the eligible user public.”).

<sup>15</sup> *CCIA*, 693 F.2d at 212.

<sup>16</sup> *Wold Communications, Inc. v. FCC*, 735 F.2d 1465, 1475 (D.C. Cir. 1984) (citation omitted).

Subsequently, the Commission has used this discretion to allow non-common-carrier provision of many types of innovative services as they have developed, including satellite services,<sup>17</sup> submarine cables,<sup>18</sup> for-profit microwave systems,<sup>19</sup> dark fiber,<sup>20</sup> and various mobile services,<sup>21</sup> to name just a few.<sup>22</sup>

The same private carriage approach is appropriate with respect to stand-alone broadband transmission services, as confirmed by the Commission's decision in the *Cable Modem Declaratory Ruling* and the *Title I Broadband Order*, as well as by the Supreme Court's decision in *Brand X*. In the *Cable Modem Declaratory Ruling*,<sup>23</sup> the Commission decided that any "stand-alone transmission service" offered by cable companies to ISPs would be a "private

---

<sup>17</sup> *Licensing Under Title III of the Communications Act of 1934, as amended*, 8 FCC Rcd 1387 (1993) (allowing certain satellite services on a private carriage basis, including mobile voice, data, facsimile, and position location for both domestic and international subscribers); *Application of Loral/Qualcomm Partnership, L.P.*, 10 FCC Rcd 2333 (1995) (allowing use of the Globalstar system for mobile voice, data, facsimile, and other services as a non-common carrier).

<sup>18</sup> *AT&T Submarine Systems, Inc.; FLAG Pacific Limited*, 15 FCC Rcd 22064 (2000).

<sup>19</sup> *See, e.g., General Telephone Company of the Southwest*, 3 FCC Rcd 6778 (1988) (providing that for-profit microwave systems may be offered as private carriage, even if interconnected with the public switched telephone network).

<sup>20</sup> *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994).

<sup>21</sup> *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 6 FCC Rcd 6601 (1991); *Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*, 89 F.C.C.2d 58 (1982) (dispatch services may be offered either on a common or non-common carrier basis); *Petition for Reconsideration of Amendment of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorization*, 98 F.C.C.2d 792 (1984) (private carrier paging system may be offered either on a common or non-common carrier basis).

<sup>22</sup> A listing of further examples was included as Exhibit C to *Verizon Comments*.

<sup>23</sup> *Inquiry Concerning High-Speed Access to Internet over Cable and Other Facilities*, 17 FCC Rcd 4798 (2002) ("*Cable Modem Declaratory Ruling*").

carrier service and not a common carrier service.”<sup>24</sup> *Id.* ¶ 54. The Commission recognized that Title I treatment is appropriate where a provider deals with selected customers “on an individualized basis” rather than offering services “indiscriminately.” *Id.* ¶ 55. The Supreme Court’s decision in *Brand X* subsequently affirmed the Commission’s application of Title I to cable operators’ broadband services. *NCTA v. Brand X Internet Servs.*, 125 S. Ct. 2688 (2005). And, directly to the point here, the Court also recognized that “[t]he Commission has long held that ‘all those who provide some form of transmission services are not necessarily common carriers.’” *Id.* at 2706 (citation omitted).

Likewise, as discussed above, the Commission again concluded in the *Title I Broadband Order* that broadband transmission services – identical to those at issue here – may be offered on a private carriage basis when used as part of an Internet access service. *Title I Broadband Order* ¶ 103. As was true in the context of cable providers, the Commission noted that it expected “a collection of individualized arrangements” by providers who sell these broadband transmission services for use in Internet access services, and concluded that private carriage treatment was appropriate. *Id.*

The Commission’s analysis in this regard is no less applicable when these same services are sold to sophisticated enterprise customers for uses other than Internet access. No provider has market power with respect to any broadband transmission services, whether or not those services are used to access the Internet. And the absence of any such market power precludes compulsory common carrier treatment of these services. Moreover, the sophisticated customers who purchase these broadband transmission services demand individualized solutions and

---

<sup>24</sup> In fact, even before the Commission’s *Cable Modem Declaratory Ruling*, cable companies (and satellite and wireless companies) were free to offer broadband transmission on a non-common-carrier basis – or, indeed, not to offer transmission on a stand-alone basis at all.

arrangements that are best handled through “individualized arrangements.” Thus, as Verizon demonstrated throughout this proceeding, the strong and increasing competition for broadband services compels the Commission to classify *all* broadband transmission under Title I, whether or not those transmission services happen to be used to access the Internet.

Nor does the current Title II treatment of broadband services support a contrary conclusion. The Commission’s treatment of local telephone company broadband services under Title II until now has not been the product of a considered decision on the part of the Commission. Instead, Title II has been applied to wireline broadband reflexively, through “regulatory creep.” That is, because the telephone companies provided voice services subject to Title II, the Commission reflexively subjected them to Title II regulation in their provision of broadband as well. But the mere fact that local telephone companies are regulated under Title II when they provide narrowband voice transmission provides no impediment to regulating their broadband transmission under Title I. Indeed, it is well established that telephone companies can act as non-common carriers when they offer transmission services or facilities, just as they can when they offer other types of services.<sup>25</sup> As the D.C. Circuit has noted, “[w]hether an entity in a given case is to be considered a common carrier” turns not on its typical status but “on the particular practice under surveillance.”<sup>26</sup>

---

<sup>25</sup> See, e.g., *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (upholding regulation of undersea fiber optic telecommunications cable on non-common carrier basis); *Southwestern Bell Tel. Co.* (recognizing provision of dark fiber on non-common carrier basis); *FLAG Pacific Limited*, 15 FCC Rcd 22064 (2000) (involving undersea telecommunications cable on a non-common carrier basis); *FLAG Atlantic Limited*, 15 FCC Rcd 21359 (1999) (same).

<sup>26</sup> *Southwestern Bell Tel. Co.*, 19 F.3d at 1481; see also *NARUC v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (finding it “logical to conclude that one can be a common carrier with regard to some activities but not others”).

By eliminating in this context the counterproductive and expensive Title II regulation of broadband transmission services sold by local telephone companies, the Commission would allow local telephone companies – just like all other competitors – to negotiate flexible, mutually beneficial terms and conditions with their customers. Scrapping Title II’s stringent tariffing system in the context of these competitive and innovative services also would create a regulatory environment conducive to the very substantial further investment needed to bring about widespread broadband deployment and would prevent this unnecessary regulation from further distorting a vibrantly competitive market. *See Title I Broadband Order* ¶ 3.

**B. The Robust Competition for Broadband Transmission Services Demonstrates the Lack of Any Need for Common Carrier Regulation.**

The competitive nature of broadband transmission services confirms this conclusion. Stand-alone broadband transmission services sold to enterprise customers are subject to intense competition, and local telephone companies have never had market power with respect to these services. In brief terms, no providers – and certainly no local telephone company – has market power over broadband transmission services. The larger business segment is typified by vigorous, well-funded competitors; massive recent investments sunk into fiber and packet switches; and large, sophisticated customers with long-term contracts. All of these factors prevent any exercise of market power by local telephone companies or any other providers.<sup>27</sup>

Even after Verizon completes its merger with MCI, the combined entity will be a minority player in the competition for broadband transmission services. As Verizon has

---

<sup>27</sup> Verizon Broadband Non-Dominance Comments, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, at 19-22 (filed Mar. 1, 2002); Verizon Broadband Non-Dominance Reply Comments, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket NO. 01-337, at 26-30 (filed Apr. 22, 2002).

previously explained, customers of these services have many alternatives from whom they can purchase broadband services such as ATM and Frame Relay.<sup>28</sup> In 2004, Verizon accounted for only about a 5.1 percent market share of ATM revenues, and approximately a 4.9 percent share of ATM revenues nationally.<sup>29</sup> Although the combined entity will be an important provider of these services, it certainly will not be in any position to exercise market power. Instead the vast majority of these services (to the tune of 75 percent or more) still will be provided by other players, and Verizon will still face stiff competition from SBC/AT&T, Sprint Nextel, Qwest, Level 3, XO and a host of other providers.<sup>30</sup> Any attempt by local telephone companies to raise the price or reduce their output of ATM, Frame Relay, gigabit Ethernet or other broadband services would lead customers to defect to the many other suppliers of the same services who are ready and willing to supply these services.

Moreover, a number of competing last-mile technologies – including satellite, fixed wireless, third-generation (“3G”) wireless, broadband over power lines (“BPL”), and Wi-Fi – eliminate any “bottleneck” concerns and provide still further competition today, with the promise of even greater competition to come.<sup>31</sup> For example, a study by In-Stat/MDR found that 41 percent of “enterprises” (which is defined as businesses with 5,000 or more employees) were using cable modem service, 40 percent were using fixed wireless, and 21 percent were using

---

<sup>28</sup> See, e.g., *2002 Broadband Fact Report*, at 26-31; *Enterprise Market Presentation*; *March 2004 Broadband Fact Report*, at 24-26.

<sup>29</sup> M. Bowen, *et al.*, Schwab Soundview Capital Markets, *AT&T Corp.* at 3 (Jan. 21, 2004).

<sup>30</sup> See, e.g., *See, e.g., 2002 Broadband Fact Report*, at 26-31; *Enterprise Market Presentation*; *March 2004 Broadband Fact Report*, at 24-26; see also Letter from Dee May to Marlene H. Dortch, *Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Attachment 1 (filed Sep. 14, 2005).

<sup>31</sup> See, e.g., *Fourth Report to Congress on Availability of Advanced Telecommunications Capability in the United States*, 19 FCC Rcd 20540, 20553-20562 (2004).

satellite, in place of or in addition to other alternatives such as high-speed ILEC lines.<sup>32</sup> With respect to the “middle market” (which is defined as businesses with between 500 and 5,000 employees), In-Stat/MDR reported that 32 percent were using cable modem, 29 percent fixed wireless, and 9 percent were using satellite.<sup>33</sup> In addition, the study found that 40 percent of enterprise businesses and 38 percent of middle-market businesses plan to use cable modem in the next 12 months, and that 54 percent and 44 percent, respectively, plan to use fixed wireless within that time.<sup>34</sup> Under these circumstances, imposing Title II common carrier regulations and the *Computer Inquiry* rules on one (and only one) class of service providers is affirmatively counterproductive, and continuing this lopsided treatment will jeopardize the continued development of these innovative broadband services on a competitive basis.

---

<sup>32</sup> K. Burney & C. Nelson, In-Stat/MDR, *Cash Cows say “Bye-Bye”: Future of Private Line Services in US Businesses (5+ Employees)*, at 19, Table 9 (Dec. 2003). (“*In-Stat/MDR December 2003 Study*”); *March 2004 Broadband Fact Report* at 25.

<sup>33</sup> *In-Stat/MDR December 2003 Study*.

<sup>34</sup> *Id.* at 19, Table 10.

## CONCLUSION

The evidence adduced in this record showing the state of competition and local telephone companies' lack of market power for *all* broadband services, including specifically stand-alone broadband transmission services like ATM and Frame Relay, strongly supports the conclusion that Title II is the wrong regulatory pigeonhole for any wireline broadband services.

Michael E. Glover  
*Of Counsel*

Respectfully submitted,



Edward Shakin  
William H. Johnson

1515 North Courthouse Road  
Suite 500  
Arlington, VA 22201  
(703) 351-3060  
will.h.johnson@verizon.com

November 16, 2005

Attorneys for the  
Verizon telephone companies

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Southwest Incorporated d/b/a Verizon Southwest  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.