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

OPPOSITION OF XO COMMUNICATIONS SERVICES, INC. TO VERIZON'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S WIRELINE BROADBAND INTERNET ACCESS ORDER

XO Communications Services, Inc. ("XO"), through counsel, hereby respectfully submits its Opposition to the Verizon Companies' ("Verizon's") Petition for Reconsideration[1] of the Commission's Wireline Broadband Internet Access Order.[2]

I. INTRODUCTION AND SUMMARY

Although Verizon captions its Petition as a "limited reconsideration," Verizon is actually asking the Commission to expand greatly its entire Wireline Broadband Internet Access Order to cover stand-alone broadband transmission services not used to provide Internet access, such as ATM and

---

1 *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Petition for Limited Reconsideration of Title I Broadband Order, CC Docket No. 02-33 (Nov. 16, 2005) ("Verizon Petition"). *See also* Notice of Publication in Federal Register 74061 (Dec. 14, 2005).

2 *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 02-33, FCC 05-150 (Sept. 23, 2005) ("Wireline Broadband Internet Access Order" or "Order").

frame relay.[3] Verizon seeks this expansion despite the fact that the premise of the Commission's Order is to "establish a new regulatory framework for broadband **Internet access services** offered by wireline facilities-based providers."[4] Nevertheless, Verizon claims that because it needs additional regulatory flexibility to "craft broadband services"[5] and believes it has provided factual support demonstrating that these broadband transmission services warrant deregulation, the Commission should disregard the entire basis of its Wireline Broadband Internet Access Order and expand the regulatory relief as Verizon sees fit.

The Commission should deny Verizon's Petition. As discussed below, the Commission has already considered and rejected Verizon's non-dominance argument with respect to broadband transmission services not used for Internet access services. Likewise, the Commission has considered Verizon's purported factual support that it lacks market power with respect to stand-alone broadband transmission services and summarily rejected Verizon's findings. Verizon provides no new legal or factual support in its Petition, but rather hopes that by again presenting the same material and arguments, the Commission will grant Verizon's requested relief.

The Commission must not be swayed by Verizon's attempt to repackage its comments in this proceeding and should deny Verizon's Petition. The Commission's regulation of ATM and frame relay services under Title II has a sound foundation. Competitive LECs utilize these service offerings via resale, special access tariffs and for interconnection purposes pursuant to section 251(a)(1) of the Communications Act. Accordingly, the Commission must ensure that incumbent

---

[3] Verizon Petition at 2, 5.

[4] Wireline Broadband Internet Access Order at ¶1. As reflected in the Commission's Notice of Proposed Rulemaking, the actions in this proceeding are largely directed at the xDSL platform. *See* Wireline Broadband Internet Access Notice of Proposed Rulemaking, 17 FCC Rcd 3019, FCC 02-42 at ¶12 (Feb 15, 2002) ("We recognize that xDSL may be the prevailing technology of the day for the last mile, but ongoing advances in technology may someday replace it as fiber moves close to or into the home.").

[5] Verizon Petition at 3.

LECs adhere to the common carrier regulations of Title II of the Communications Act so that robust competition will develop in the enterprise broadband market.

II. THE COMMISSION CLEARLY LIMITED THE SCOPE OF THE ORDER TO BROADBAND TRANSMISSION SERVICES THAT PROVIDE INTERNET ACCESS SERVICES

The Commission clearly identified the types of services subject to its Order:

> Wireline broadband Internet access service, for purposes of this proceeding, is a service that uses existing or future wireline facilities of the telephone network to provide subscribers with Internet access capabilities. The term "Internet access service" refers to a service that always and necessarily combines computer processing, information provision, and computer interactivity with data transport, enabling end users to run a variety of applications such as e-mail, and access web pages and newsgroups.[6]

Moreover, the Commission distinguished wireline broadband Internet access services from other high-capacity special access services, such as ATM, frame relay and gigabit Ethernet services that "lack the key characteristic of wireline brand Internet access service – they do not inextricably intertwine transmission with information-processing capabilities."[7]

In its Petition, Verizon incorrectly claims that the Commission "skips past th[e] critical issue"[8] of whether "these stand-alone services can or should be treated as private carrier offerings under Title I."[9] Verizon is incorrect. In addition to the Commission's analysis stated above, the Commission concluded that "[b]ecause carriers and end users typically use these services for basic transmission purposes, these services are telecommunications services under the statutory definitions. **These broadband telecommunications services remain subject to current Title II**

---

6 Wireline Broadband Internet Access Order at ¶9.

7 *Id.*

8 Verizon Petition at 9.

9 *Id.* (...the order says nothing about whether these stand-alone services can or should be treated as private carriage offering under Title I.").

requirements."[10] Verizon's Petition to expand the scope of the Commission's Order is inappropriate as the Commission provided a clear rationale and justified the continued regulation of broadband transmission services not used to provide Internet access services under Title II of the Communications Act.

The Commission stressed in its Order that its actions "are limited to wireline broadband **Internet access service** and its underlying broadband transmission component."[11] Moreover, the Commission acknowledged that there are several proceedings in which the Commission may consider changes to its broadband framework including the *Incumbent LEC Broadband NPRM* and the *Special Access NPRM.*[12] Therefore, to the extent the Commission determines that any modification to its broadband policies is warranted, there are specific proceedings to address such changes. Verizon should advocate its position in those designated dockets and not seek reconsideration of the Commission's Order in this proceeding.[13]

III. VERIZON HAS PROVIDED NO NEW JUSTIFICATION FOR THE COMMISSION TO GRANT ITS RECONSIDERATION REQUEST

As stated above, Verizon has repackaged the same arguments set forth in its comments in its Petition.[14] Yet repetition does not make it so. Among other things, Verizon repeatedly states that there is intense competition in all wireline broadband services and not only those services used as inputs to provide Internet access.[15] Even if this were true, and XO maintains it is not, it is irrelevant to the Commission's determination that packet-switched, broadband transmission services are "telecommunications services" provide on a common carrier basis and therefore, subject to Title II

---

10 Wireline Broadband Internet Access Order at ¶9.

11 *Id.* at ¶9, n. 15.

12 *Id.* at ¶9, n. 24.

13 As noted in the caption above, the title of the docket is specifically, *Appropriate Framework for Broadband* ***Access to the Internet*** *Over Wireline Facilities.*

regulation.[16] Moreover, Verizon's contention that packet-switched, broadband transmission services are "innovative" services provided to "sophisticated customers"[17] does not justify the Commission making the broad policy change requested by Verizon.

In its Petition, Verizon does not refute the Commission's holding that broadband transmission facilities not used as inputs for Internet access are offered on a common carrier basis. Indeed, Verizon does not argue that **it does not** provide these broadband services to the public at large, but simply claims that it is not dominant in the broadband transmission services market.[18] Verizon's market position, however, has no relevance on the Commission's determination that carriers, including Verizon, use wireline broadband services, such as ATM, frame relay and gigabit Ethernet for basic transmission purposes and accordingly, these services are properly classified as telecommunications services, subject to Title II regulation.[19] Despite its continued desire to be relieved from Title II regulation for all broadband transmission services, Verizon provides no legal or factual justification to alter the Commission's holding in any way and therefore, the Petition should be rejected in its entirety.

---

14 *See e.g.*, Verizon Petition at 5 ("Throughout the course of this proceeding, Verizon has repeatedly explained both the proprietary and necessity for treating these broadband transmission services as private carriage offerings under Title I...."). *See also, id.* at n. 6-8, listing the various comments and Ex Parte filings made by Verizon over the course of this proceeding setting forth the same arguments that the Commission rejected in its Order and that Verizon restates in its Petition.

15 Verizon Petition at 7.

16 Wireline Broadband Internet Access Order at ¶9.

17 Verizon Petition at 5.

18 *Id.* at 11-13. Although Verizon may feel that its common carrier offerings are "compulsory," it never refutes that it offers its broadband services to the general public or that it would continue to do so under Title I. *Id.* at 11.

19 Wireline Broadband Internet Access Order at ¶9.

IV. CONCLUSION

For the foregoing reasons, XO respectfully urges the Commission to deny Verizon's Petition for Reconsideration.

Respectfully submitted,

By: Heather Hendrickson

Brad E. Mutschelknaus
Thomas Cohen
Heather T. Hendrickson
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
(202) 955-9600

Counsel to XO Communications Services, Inc.

Dated: December 29, 2005