

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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	)	
	)	CC Docket Nos. 95-20, 98-10
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	)	

**REPLY COMMENTS  
OF  
BROADWING COMMUNICATIONS, LLC.  
INTEGRA TELECOM, INC.  
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.  
NEW EDGE NETWORK, INC.  
U.S. TELEPACIFIC CORP. D/B/A TELEPACIFIC COMMUNICATIONS**

Broadwing Communications, LLC, Integra Telecom, Inc., McleodUSA

Telecommunications Services, Inc., New Edge Network, Inc., and U.S. Telepacific Corp. d/b/a Telepacific Communications submit these Reply Comments concerning the “Petition for Limited Reconsideration of Title I Broadband Order” (“Petition”) filed by the Verizon Telephone Companies (“Verizon”).

**I. THE REQUESTED RELIEF IS THE SUBJECT OF OTHER PROCEEDINGS**

The comments submitted in support of the Petition by Qwest, BellSouth, and AT&T, Inc. suffer from the same deficiencies as the Petition. Most particularly, like Verizon, they request relief that is the subject of other proceedings. The Commission has recently observed that

resolution of issues “regarding the competitive nature of the packet-switched market ... is better suited to rulemaking proceedings such as the *Dom/Non-Dom NPRM* where, indeed, such issues are already clearly before the Commission”<sup>1</sup> rather than in waiver or forbearance proceedings. The Commission has also observed that the *Special Access Proceeding* “is the appropriate proceeding to address AT&T [Corp]’s arguments concerning special access competition and rates”<sup>2</sup> including for ATM and frame relay services, which are special access services.<sup>3</sup> Although AT&T also requests relief for IP-enabled broadband services (without, however, giving any idea of what those services might be), the regulatory treatment of IP-enabled services is the subject of the pending *IP-Enabled Services Proceeding*.<sup>4</sup>

As noted in initial comments, the Commission explicitly limited the present proceeding to consideration of the regulatory status of broadband transmission services when they are used by a wireline carrier to provide Internet access service.<sup>5</sup> “Consistent with the scope of the *Wireline Broadband Proceeding*, we restrict our decisions in this Order to only wireline broadband Internet access services and those wireline broadband technologies that have been utilized for such Internet access services.”<sup>6</sup>

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<sup>1</sup> *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services*, WC Docket No. 04-246, FCC 05-171, released October 14, 2005 (“*Fast Packet Order*”), para. 14, citing *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, CC Docket No. 01-337, 16 FCC Rcd 22745 (2001).

<sup>2</sup> *Fast Packet Order*, para 13.

<sup>3</sup> *Fast Packet Order*, para. 10.

<sup>4</sup> AT&T Comments at 7; *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28, released March 10, 2004.

<sup>5</sup> Comments of Broadwing et al. p. 1.

<sup>6</sup> *Wireline Broadband Order*, para. 11. (Footnote omitted)

Therefore, the issues raised by the Verizon Petition should be addressed, if at all, in those other proceedings, not here.

## **II. BOCs CAN ALREADY MAKE CUSTOMIZED OFFERINGS OF STAND-ALONE BROADBAND TRANSMISSION SERVICES**

BOCs contend that they need Title I treatment for stand-alone broadband transmission services in order to be able to offer innovative, customized services to large sophisticated users.<sup>7</sup> They fail to acknowledge, however, that BOCs already have the ability to offer stand-alone broadband service on a customized basis. AT&T offers broadband services through its unregulated affiliate SBC-ASI, Inc. The Commission has forborne from application of tariffing rules in connection with then-SBC's provision of advanced services through a separate affiliate.<sup>8</sup> Only a few months ago, the Commission in the *Fast Packet Order* granted Verizon a waiver to provide it the best of all possible worlds -- it is permitted it to keep its stand-alone broadband services outside of price caps without offering them through a separate affiliate but nonetheless was also permitted to exercise pricing flexibility for them in markets in which it qualifies for pricing flexibility.<sup>9</sup> BellSouth has chosen to include packet switched services within price caps and is able to offer those services pursuant to contract tariffs wherever it has qualified for pricing flexibility.<sup>10</sup> Qwest is equally able to take advantage of any of these options for offering innovative, stand-alone broadband services on a customized basis.

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<sup>7</sup> AT&T Comments at 14; BellSouth Comments at 3.

<sup>8</sup> *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Memorandum Opinion and Order, 17 FCC Rcd 27000 (2002).

<sup>9</sup> *Fast Packet Order*, para. 8.

<sup>10</sup> See *Fast Packet Order*, para. 7.

Accordingly, assuming the Petition otherwise had any merit, the requested relief has effectively already been granted to the BOCs making consideration of the Petition unnecessary.

### **III. THERE IS A SIGNIFICANT RISK OF DISCRIMINATION**

BOCs' claims about the need to engage in individual customer provisioning is little more than a ruse since they already have that ability. These contentions make clear, however, that the real agenda is the ability to discriminate against competitors in favor of their own services. Recent statements from BellSouth and AT&T make clear that they intend to use the Title I treatment already established in this proceeding to establish a "two-tiered" broadband network in which they favor their own customers in terms of speed and quality of connection to the Internet leaving others with inferior access.<sup>11</sup> But, if the Commission were to extend Title I treatment to stand-alone broadband services as well, BOCs would go much further than making customized offerings to customers. They would deny access altogether to competitors under the "private carriage" concept which they view as entitling them to determine to whom they provide service and/or engage in systematic discrimination in terms of price and quality against competitors that use stand-alone broadband transmission services as inputs to their own services that compete with the BOCs. This would halt competition in the broadband marketplace, because, as discussed below, BOCs retain bottleneck control over network elements used to provide stand-alone broadband services.

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<sup>11</sup> "Report: Bells to push for Web fees", CNNMoney.com, January 6, 2006, [http://money.cnn.com/2006/01/06/technology/phones\\_internet/index.htm](http://money.cnn.com/2006/01/06/technology/phones_internet/index.htm); "At SBC, Its All About 'Scale and Scope,'" BusinessWeek Online, November 7, 2005, [http://www.businessweek.com/@@n34h\\*IUQ7KtOwgA/magazine/content/05\\_45/b39580...](http://www.businessweek.com/@@n34h*IUQ7KtOwgA/magazine/content/05_45/b39580...) ; "Web Neutrality' Proviso Sought, Phone, cable firms want right to give some Internet sites priority in speed," December 13, 2005, baltimoresun.com, <http://www.baltimoresun.com/technology/bal-bz.web13dec13,1,5219858.story?coll+bal-tec>.

#### IV. THE STAND-ALONE BROADBAND MARKET IS NOT COMPETITIVE

AT&T's and BellSouth's arguments on reply that the stand-alone broadband market is sufficiently competitive to warrant deregulation are without merit.<sup>12</sup> First, like Verizon, they fail to separately identify or demonstrate competition in the retail, enterprise, or wholesale markets or to identify relevant geographic markets. Rather, they provide only unconvincing, generalizations of the broadest scope without factual support. This by itself precludes an assessment concerning whether the scope and degree of competition in any market is sufficient to warrant the requested relief.

Moreover, contrary to AT&T's contentions, the *SBC/AT&T Merger Order* is not relevant to whether BOC provision of stand-alone broadband transmission services should be deregulated.<sup>13</sup> In that decision, the Commission found only that the diminution of competition that would be caused by the mergers, after the divestitures required by the Department of Justice, was not sufficient to deny the mergers. That is a very different issue than whether BOCs possess market power in provision of transmission services and whether competitors have sufficient alternative providers to warrant loosening Title II requirements. The SBC/AT&T and Verizon/MCI mergers reduce competition, making the relief requested here even less justifiable, rather than the reverse.

Completely omitted from the AT&T, Qwest, and BellSouth comments, however, is any acknowledgment or discussion of the Commission's more pertinent finding in the *Triennial Review Remand Order* that CLECs rarely have alternatives to BOCs' high capacity loop and

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<sup>12</sup> AT&T Reply Comments at 5; BellSouth Comments at 7.

<sup>13</sup> *SBC Communications, Inc. and AT&T Corp. Application for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, released November 11, 2005 (SBC/AT&T Merger Order); AT&T Comments at 8.

transport services.<sup>14</sup> As noted in initial comments, the Commission there rejected ILEC requests to eliminate their obligation to provide unbundled access to high capacity loop and transport facilities.<sup>15</sup> In rejecting the BOC claims that competitors did not need access to unbundled last mile broadband facilities, Chairman Powell explained that “the record and our analysis demonstrated that competitors still depended significantly on them in the overwhelming majority of markets and, thus, we have required unbundling in those circumstances.”<sup>16</sup> Therefore, BOCs continue to possess bottleneck control over the facilities used to provide the high speed transmission services for which they seek relief.

Accordingly, apart from the meager and deficient showing made here, the Commission has already found for all practical purposes that BOC’s retain bottleneck control over facilities used to provide stand-alone broadband transmission services.

## V. CONCLUSION

For these reasons, the Commission should deny the Petition.

Respectfully submitted,

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<sup>14</sup> *Unbundled Access to Network Elements*, WC Docket 04-313, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338, Order on Remand, FCC 04-290, ¶¶ 187-194 (“*TRO Remand Order*”)

<sup>15</sup> *TRO Remand Order* ¶¶ 187-194.

<sup>16</sup> Separate Statement of Chairman Powell, *TRO Remand Order Press Release*.

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