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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Consumer Protection) WC Docket No. 05-271
in the Broadband Era)

COMMENTS OF COMCAST CORPORATION

Comcast Corporation (“Comcast”) hereby responds to the Commission’s Notice of Proposed Rulemaking (“*Notice*”) in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

The widespread availability of broadband services represents a seismic shift in the communications marketplace. Cable operators’ widespread deployment of high-speed Internet services, and the resulting competitive responses from telephone companies and others, have ensured that virtually every consumer in the United States has access to broadband services. In less than a decade, the number of U.S. households subscribing to broadband access services has increased from zero to over 41 million. The widespread availability of broadband Internet access service has stimulated investment and innovation in a wide array of broadband applications, and these applications in turn have generated increased broadband subscribership.

The success of the broadband marketplace is due in large part to unfettered free market competition. Informed by the “hands-off” policy established by Congress, the Commission has

¹ *In re Consumer Protection in the Broadband Era*, Notice of Proposed Rulemaking, 20 FCC Rcd. 14853 (2005) (“*Notice*”).

repeatedly declined to accede to certain parties' calls to regulate the manner in which providers of broadband access deal with their customers or with third-party providers of Internet applications. The result of these successful policies has been near-ubiquitous broadband availability, soaring broadband subscribership, robust (and growing) broadband competition, and a vast array of broadband applications. Throughout this period of revolutionary change, which is still underway, competition -- not regulation -- has ensured that consumers' needs and expectations are met.

Now, however, the *Notice* seeks to explore the desirability of new "consumer protection" regulations. No such regulations are needed, even if the Commission had authority to adopt them.

As an initial matter, the Commission's Title I authority is not necessarily as expansive as the *Notice* appears to assume. The courts have repeatedly confirmed that the Commission's authority under Title I is by no means limitless and may only be used to regulate services that fall within the Commission's general jurisdiction and where the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities. The *Notice* does little to demonstrate an appropriate basis for regulation of residential broadband services. Specifically, it provides no analysis as to why the regulations it proposes are reasonably ancillary to the performance of the Commission's statutorily mandated responsibilities. Moreover, the Commission has traditionally exercised great restraint in using its Title I authority. There is no justification for it to deviate from such restraint now, especially in a marketplace where the lack of regulation has led to such salutary developments.

Irrespective of whether the Commission has authority to adopt new regulations on broadband Internet service, it is clear that there is no need for such regulations. The comments

that follow make clear that: (1) there is no evidence that the concerns raised in the *Notice* are real; and (2) there is substantial marketplace evidence that thriving broadband competition in the residential market is ensuring that consumers' needs are properly addressed.

The *Notice* solicits comments on what regulatory measures, if any, are needed to fulfill certain enumerated "consumer protection objectives" with respect to broadband services. But intense and growing competition for residential broadband services obviates the need for consumer protection regulation. The Commission should proceed with the utmost caution; no "consumer protection" regulations should be promulgated absent clear evidence of a genuine problem, clear legal authority for the Commission to address it, and a strong basis for concluding that the planned regulation will do more good than harm.

II. THE BROADBAND MARKETPLACE IS VIBRANT, DYNAMIC, AND COMPETITIVE, IN LARGE PART BECAUSE THE COMMISSION WISELY HAS AVOIDED IMPOSING UNNECESSARY REGULATIONS.

At the outset, any consideration of "consumer protection" issues should be informed by a review of the remarkable success of the broadband marketplace over the past decade and how that success was attained. It is important to recognize just how rapidly this marketplace has developed, and to understand the business and regulatory climate that produced that success.

A decade ago, residential broadband Internet access services did not exist. In 1995, only about 17.5 million U.S. adults accessed the Internet, and virtually every one of them did so by way of a dial-up connection that had a top speed of 53 thousand bits per second (Kilobits per second, or "Kbps").² The rare household that had an exceptional need for higher speeds

² See Humphrey Taylor, *Internet Penetration at 66% of Adults (137 Million) Nationwide* Table 4, The Harris Poll #18, Apr. 17, 2002, available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=295.

theoretically had the ability to subscribe to a Trunk Level 1 (T-1) line from a telephone company, but this was a cost-prohibitive option.³ Although cable companies were investing in researching and developing the technology needed for high-speed Internet service over cable, many people, including leading technologists and industry analysts, largely dismissed cable Internet service as a pipe dream.⁴ As Stagg Newman, Vice President for Network Technology and Architecture at Bellcore at the time and later Chief Technologist at the Commission, testified at the Commission's *Bandwidth Forum* in 1997: "We have done a lot of studies, cable line did some studies and say getting digital signals around a coaxial network in somebody's home is hard. It's bad news. We did some more detailed studies at Bellcore and found out they were far too optimistic."⁵ In fact, he stated that the near-term hope for greater Internet speed rested with

³ T-1 lines, which provided a dedicated point-to-point connection operating at 1.544 Megabits per second ("Mbps"), typically were priced at hundreds if not thousands of dollars a month. At the time, incumbent local exchange carriers ("ILECs") possessed Digital Subscriber Line ("DSL") technology but withheld it from the market for commercial reasons; "[a]lthough the ILECs have possessed DSL technology since the late 1980s, they did not offer the service, for concern that it would negatively impact their other lines of businesses" such as T-1 lines. Cable Services Bureau, FCC, *Broadband Today: A Staff Report to William E. Kennard, Chairman, Federal Communications Commission, on Industry Monitoring Sessions Convened by the Cable Services Bureau* 27 (Oct. 13, 1999) ("*Bureau Report*"), available at <http://www.fcc.gov/Bureaus/Cable/Reports/broadbandtoday.pdf>.

⁴ See, e.g., John C. Dvorak, *The Looming Cable Modem Fiasco*, PC Magazine, Sept. 12, 1995, at 89 ("The noisiest buzz in the industry lately has been over the emerging use of cable TV systems to provide fast network data transmissions using a device called a cable modem. But *the likelihood of this technology succeeding is zilch*. It's one of those interesting-sounding ideas that will attract what venture capitalists call dumb money. Unfortunately, it's a big distraction in a market that should be concentrating on ISDN and broadband." (emphasis added)); Kent Gibbons, *Cable's Internet Dreams Hinge on Content, Service: Analysts*, Multichannel News, Dec. 11, 1995 (reporting that consultants at the Yankee Group considered a number of issues, such as lack of content and a lackluster reputation for service, as impediments to "cable's much-hyped move into Internet services"); Thomas P. Southwick, *Cable Television, The First 50 Years*, Cable World, Dec. 7, 1998, at S1 (reporting that, at an industry meeting in 1996, Intel founder and CEO Andy Grove "said there was little reason to expect cable would be a viable delivery system for Internet access in the near future").

⁵ See *Testimony of Stagg Newman, Vice President, Network Technology and Architecture, Applied Research, Bellcore, Bandwidth Forum, Federal Communications Commission* 15 (Jan. 23, 1997), available at <http://www.fcc.gov/Reports/970123.txt>.

Integrated Services Digital Network (“ISDN”), not cable modem service.⁶ (ISDN, of course, entailed much lower speeds and much higher costs for consumers than the broadband services that soon emerged.⁷)

Despite widespread predictions that the effort was doomed to failure, cable companies boldly pressed ahead to develop and deploy high-speed cable Internet. With no government subsidies, no assurances of technological success, and no proof of consumer demand, they raised and invested tens of billions of dollars of risk capital, built the infrastructure, hired and trained the technical and customer service personnel, and created a reliable and affordable broadband Internet service that is now -- just a few years later -- available to almost every home passed by cable in the United States.⁸ In turn, cable operators’ investment and commitment to cable Internet service “spurred the ILECs to offer DSL or risk losing potential subscribers to cable.”⁹

⁶ See *id.* at 11, 14 (“ISDN I think has a real role, particularly over the next five to ten years. Because as you’ll see later, getting a broadband mass network out there quickly is a tremendous challenge. And today almost all Internet services are much better over -- well, they’re all better over ISDN than over POTS modem. And actually at ISDN speeds of 150 [Kbps]. That will be adequate for most of the services people envision over the next five years. Apparently that’s the view when we talk to people like Microsoft and others. . . . I believe 128 [Kbps] today would be a tremendous step forward and that’s what ISDN gives us.”).

⁷ See *id.*; see also Richard Grigonis, *What Is ISDN?*, Teleconnect, June 1997, at S6 (reporting that ISDN service typically includes three charges: an installation charge that varies from \$100 to \$500, a monthly service charge that varies from \$25 to \$100, and a usage charge that, in New Jersey, cost “two cents per minute between 9 am and 7 pm, and a penny a minute thereafter”), available at LEXIS, News Library; Jennifer Jones, *DSL in Distress*, Network World Fusion, Dec. 4, 2000 (noting that it cost about \$1,000 per month per line as late as the year 2000 to outfit an operation with T1 Internet access), available at <http://www.networkworld.com/net.worker/news/2000/1204distress.html>.

⁸ See National Cable & Telecomms. Ass’n, *2005 Mid-Year Industry Overview* 8 (July 2005), available at http://www.ncta.com/industry_overview/CableMid-YearOverview05FINAL.pdf; Notice ¶ 52. As of the end of the third quarter of 2005, Comcast alone offered cable Internet service to approximately 41 million homes and provided the service to 8.1 million of those homes. See Press Release, Comcast Corp., *Comcast Reports Third Quarter 2005 Results* 10 (Nov. 3, 2005), available at http://media.corporate-ir.net/media_files/irol/11/118591/Earnings_3Q05/3Q_earningsrelease.pdf.

⁹ *Bureau Report* at 27. “In various communities where cable modem service becomes available, the ILECs would soon deploy DSL service that was comparable in price and performance to the cable modem offering. Thus, (footnote continued . . .)

The introduction of cable Internet service and the ILECs' subsequent roll-out of DSL -- and the responses that these services generated in the marketplace -- sparked changes that are nothing less than revolutionary. Residential broadband subscribers grew from essentially zero ten years ago and less than three million in December 1999¹⁰ to approximately 41 million households by October 31, 2005.¹¹ High-speed cable Internet is available today to 112.5 million homes,¹² and ILECs have made DSL available across most of their footprints as well. Thus, as the Commission recognizes, "many [(one could fairly say 'most')] consumers have a competitive choice for broadband Internet access services today."¹³

The widespread availability and adoption of broadband Internet access services has had dramatic effects on almost every segment of the communications and entertainment industries. Consumer adoption of broadband access services has pulled the dot.com Internet business up from the bust of 2001 to the amazing success it is experiencing today. Broadband Internet access has enabled VoIP, efficient e-commerce, video streaming and downloadable video and movies,

(. . . footnote continued)

prior to cable modem deployment, the ILECs had little incentive to deploy DSL and the consumer had no choice for high speed Internet access." *Id.*

¹⁰ See Wireline Competition Bureau, FCC, *High-Speed Services for Internet Access: Status as of December 31, 2004* Table 1 (July 2005), available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0705.pdf.

¹¹ Kagan Research, LLC, *Kagan Media Index*, Kagan Media Money, Nov. 29, 2005, at 6 (reporting 24.6 million cable Internet subscribers, 15.7 million DSL subscribers, 400,000 satellite broadband subscribers, and 300,000 fixed wireless subscribers); see Reuters, *Future Looks Bright for Internet Ads*, CNETNews.com, Dec. 21, 2005 (reporting that, according to Leichtman Research Group, there were 23.2 million cable Internet subscribers and 17 million DSL customers at the end of the third quarter of 2005), at http://news.com.com/Future+looks+bright+for+Internet+ads/2100-1024_3-6003967.html.

¹² National Cable & Telecomms. Ass'n, *Industry Overview*, at <http://www.ncta.com/Docs/PageContent.cfm?pageID=86> (last visited Jan. 5, 2006).

¹³ Notice ¶ 47.

online gaming, Google searches in seconds, the availability of books online, the emergence of numerous music download services (which, in turn, has provided a substantial boost to portable music consumer electronics), and thousands of other services. These valuable services and the demonstrated market demand for broadband access, in turn, have enticed other players to invest and innovate in new broadband access technologies -- such as licensed mobile wireless (Verizon Wireless, Cingular, and Sprint are all rapidly expanding their wireless broadband services), unlicensed wireless (Wi-Fi and Wi-Max), satellite, and broadband over power lines. In short, “a wide variety of competitive and potentially competitive providers and offerings are emerging in this marketplace.”¹⁴

Throughout this period of intense innovation and enormous investment, the proper role of government has often been debated. From the moment broadband Internet service was first introduced, self-anointed “public interest” groups and certain narrowband Internet service providers (“ISPs”) made apocalyptic predictions about the harms that would befall consumers unless the government intervened. They warned that broadband network owners would destroy freedom of the Internet, expressed doubts about the likelihood of competition, and repeatedly demanded government regulation to prevent the misdeeds they insisted that network owners would perpetrate.¹⁵ Fortunately, policymakers -- including three previous FCC Chairmen of both

¹⁴ *Id.* ¶ 50.

¹⁵ *See, e.g.,* Consumers Union *et al.* Petition to Deny the Merger of AT&T and TCI, CS Docket No. 98-178, at 11 (Oct. 29, 1998) (“Offering Internet service under the closed cable TV system model will, quite literally, change the character of the Internet as an engine of creative technological and marketplace innovation, open entry, economic growth, and free expression.”); MindSpring Comments in First 706 Inquiry, CC Docket No. 98-146, at 11 (Sept. 14, 1998) (“Put simply, if the nation had to depend upon current last mile owners to bring us commercial access to the Internet, we would still be waiting. The local telephone and cable industry have not been important innovators or leaders in the Internet in any respect.”); Center for Media Education *et al.* Reply Comments in First 706 Inquiry, CC Docket No. 98-146, at 15 (Oct. 8, 1998) (“A cable operator offering the only viable technology for
(footnote continued . . .)

political parties-- resisted these calls for regulation and, instead, heeded the pro-competitive, deregulatory principles of the Telecommunications Act of 1996,¹⁶ and chose to encourage investment by facilities-based competitors by refraining from regulation.¹⁷ Not surprisingly, the successes resulting from this approach led President Bush to call for *more* competition and *less* regulation: “[A] proper role for the government is to clear regulatory hurdles so those who are going to make investments do so. Broadband is going to spread because it’s going to make sense for private sector companies to spread it so long as the regulatory burden is reduced -- in other words, so long as policy at the government level encourages people to invest, not discourages investment.”¹⁸ Bipartisan support for these deregulatory principles has resulted in ubiquitous broadband Internet access, robust (and growing) competition, and numerous benefits, many of which were inconceivable just a few years ago, flowing to American consumers.

It is against this backdrop that any proposals for broadband Internet regulation should be evaluated. Given that non-regulation and deregulation has stimulated so much innovation,

(. . . footnote continued)

Internet access and ha[ving] a monopoly over that service will be the entity selecting what Internet users may view.”).

¹⁶ See Telecommunications Act of 1996, preamble, Pub. L. No. 104-104, 110 Stat. 56; see also 47 U.S.C. § 230(b)(2).

¹⁷ See *In re Inquiry Concerning the Deployment of Advanced Telecomms. Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report, 14 FCC Rcd. 2398 ¶ 105 (1999) (“We agree . . . that premature regulation might impose structural impediments to the natural evolution and growth process which has made the Internet so successful.” (internal quotations omitted)); *In re Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, Declaratory Ruling and NPRM, 17 FCC Rcd. 4798 ¶ 5 (2002) (“*Cable Internet Declaratory Ruling*”) (“[W]e believe ‘broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market.’”), *aff’d National Cable & Telecomm. Ass’n v. Brand X Internet Serv.*, 125 S. Ct. 2688 (2005).

¹⁸ See President George W. Bush, Remarks by the President at American Association of Community Colleges Annual Convention, Minneapolis, MN (Apr. 26, 2004), *available at* <http://www.whitehouse.gov/news/releases/2004/04/20040426-6.html>.

investment, and choice, a heavy burden of proof must be borne by anyone who would alter the workings of the residential marketplace through Commission rules and regulations. Given the powerful incentives that competition creates for broadband service providers to serve their customers' interests, claims that market failure necessitates government intervention should be viewed with a healthy skepticism.

III. THE COMMISSION'S TITLE I AUTHORITY IS NOT LIMITLESS AND SHOULD BE EXERCISED WITH CAUTION, ESPECIALLY WHEN CONSIDERING REGULATING THE INTERNET.

Separate and apart from the question of whether the Commission *should* regulate (as discussed in the preceding and succeeding sections) is the question of whether the Commission *can* regulate. In the *Notice*, the Commission states that any broadband consumer protection framework “necessarily will be built on [its] ancillary jurisdiction under Title I,” which “is ample to accomplish the consumer protection goals [it] identif[ies].”¹⁹ The Commission’s Title I authority, however, is not necessarily as expansive as the *Notice* appears to assume. Moreover, the Commission has traditionally exercised great restraint in using Title I authority to regulate information services such as broadband Internet access services. The Commission must ensure that any new regulations it imposes on unregulated information services are properly within its Title I authority and should only exercise such authority where absolutely necessary.

The Commission’s powers under Title I are by no means limitless, as was vividly illustrated in two cases where regulations based on Title I authority were struck down.²⁰ The

¹⁹ *Notice* ¶ 146.

²⁰ *See American Library Ass’n v. FCC*, 406 F.3d 689, 692 (D.C. Cir. 2005) (“Although somewhat amorphous, ancillary jurisdiction is nonetheless constrained.”); *Motion Picture Ass’n of Am. v. FCC*, 309 F.3d 796, 804 (D.C. Cir. 2002) (“In other words, the FCC’s authority under § 1 is broad, but not without limits.”). Where the Commission recently attempted to use its Title I authority to impose broadcast copy protection regulations on
(footnote continued . . .)

Commission only has authority to regulate under Title I where: “(1) the Commission’s general jurisdictional grant under Title I covers the subject of the regulations and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”²¹ In the case of interstate information services such as broadband Internet access, there is no dispute that such services fall within the Commission’s general jurisdictional grant under Title I. Yet, as the U.S. Court of Appeals for the 7th Circuit has pointed out, “The Court [in *Southwestern Cable*] appeared to be treading lightly even where the activity at issue involved cable television, which ‘easily falls within’ Title I’s general jurisdictional grant.”²² The issue then is whether proposed regulations are “reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”²³

The *Notice* does little to demonstrate an appropriate basis for exercising Title I authority to promulgate regulations for residential broadband services. Although the *Notice* summarily asserts that there is “ample” Title I authority to adopt a wide variety of “consumer protection” regulations, it provides no analysis as to why the regulations it proposes are “reasonably ancillary” to the performance of the Commission’s “statutorily mandated responsibilities.” In fact, the one most directly relevant statutory provision seems to point in the opposite direction;

(. . . footnote continued)

consumer electronics equipment, the D.C. Circuit found that the Commission lacked jurisdiction because “Title I does not authorize the Commission to regulate receiver apparatus after a transmission is complete.” *American Library Ass’n*, 406 F.3d at 692. Thus, “the FCC’s purported exercise of ancillary authority founder[ed] on the first condition.” *Id.*

²¹ *American Library Ass’n*, 406 F.3d at 700 (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968)).

²² *Id.* at 702 (citing *Illinois Citizens Comm. for Broad. v. FCC*, 467 F.2d 1397, 1400 (7th Cir. 1972)).

²³ *Id.* at 700.

Congress expressly declared “[i]t is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*”²⁴

The Commission has traditionally exercised great restraint in using its Title I authority.²⁵ In the past, the Commission used such authority to impose requirements on interstate information service providers only where it was necessary to the effective performance of its clear statutory mandates to ensure access to communications services to all Americans or to promote “safety of life and property.”²⁶ None of the regulations under consideration in this proceeding would promote those statutory objectives. The Commission has not previously attempted to use its Title I authority to impose Title II-like consumer protection regulations as the *Notice* contemplates. Nor should it attempt to do so now. Rather, the Commission should proceed cautiously in relying on Title I as a basis of authority and only attempt to exercise such authority where absolutely necessary to further its statutory mandates.²⁷

²⁴ 47 U.S.C. § 230(b)(2) (emphasis added).

²⁵ See *Cable Internet Declaratory Ruling*, 17 FCC Rcd. 4798 ¶ 76 (“The Commission asserted ancillary jurisdiction over information services (then called ‘enhanced services’) in the Computer Inquiries. Since then, it has only exercised that authority in limited instances.” (footnotes omitted)).

²⁶ See *In re Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecomms. Serv., Telecomms. Equip. and Customer Premises Equip. by Persons with Disabilities*, Report & Order and Further Notice of Inquiry, 16 FCC Rcd. 6417 ¶ 107 (1999) (“[W]e . . . use our discretion to reach only those services we find essential to making telecommunications services accessible.”); *In re E911 Requirements for IP-Enabled Serv. Providers*, First Report & Order and NPRM, 20 FCC Rcd. 10245 ¶ 29 (2005).

²⁷ See *American Library Ass’n*, 406 F.3d at 702 (noting that, in each of the Supreme Court’s three decisions opining on the Commission’s Title I authority, “the Court followed a very cautious approach in deciding whether the Commission had validly invoked its ancillary jurisdiction, even when the regulations under review clearly addressed ‘communications by wire or radio’”).

IV. THE “CONSUMER PROTECTION” CONCERNS RAISED IN THE NOTICE ARE MORE EFFECTIVELY ADDRESSED BY COMPETITION THAN BY REGULATION.

Today’s broadband Internet access marketplace is extremely competitive and growing more so each day. As Chairman Martin explained: “[T]he broadband Internet access market today is characterized by multiple platforms that are vigorously competing for customers.”²⁸ In this competitive environment, it is consumers -- not service providers -- that have power. In a competitive marketplace, when one service provider fails to meet a consumer’s expectations, that consumer will quickly gravitate to another provider. This provides every incentive for Comcast (and presumably for its competitors) to ensure that its customers’ interests are properly served. Comcast does so currently without government mandates and regulations because to do otherwise would risk alienating its customers and having them switch to an alternative broadband service provider.²⁹ There is no need to inject the government into a free market that is working efficiently and effectively.

The Commission should also bear in mind the costs and unintended consequences of regulation. As Alfred E. Kahn famously observed, even imperfect competition is preferable to regulation.³⁰ Or, as former Texas PSC and FERC Chairman Pat Wood put it, “competition on its

²⁸ Notice at 123 (Statement of Chairman Kevin Martin).

²⁹ See Comcast Reply Comments filed in CS Docket No. 02-52, at 28 (Aug. 6, 2002) (“*Comcast Cable Internet Reply Comments*”) (“The availability of competitive alternatives -- including both competing broadband providers (DSL, satellite, wireless) and existing narrowband options (primarily via plain old telephone service) -- serves to discipline all market participants and ensure that they deliver quality services to their existing customers.” (footnote omitted)).

³⁰ See Alfred E. Kahn, *The Economics of Regulations: Principles and Institutions* 327-29 (The MIT Press 1988) (1970); see also Frank H. Easterbrook, *The Limits of Antitrust*, 63 Tex. L. Rev. 1, 24 (1984) (“The entire corpus of antitrust doctrine is based on the belief that markets do better than judges or regulators in rewarding practices that create economic benefit and penalizing others. The common belief that if markets are imperfect then something else must be better is a logical fallacy.”).

worst day is better than regulation on its best day.”³¹ These insights are especially apt in a marketplace that is changing at breakneck speed.

In the *Notice*, the Commission seeks comment on: (1) whether it should adopt new privacy regulations for broadband Internet access services; (2) what, if any, regulations are needed to protect broadband Internet access customers from slamming; (3) whether it should impose requirements on broadband Internet access service providers that are similar to its existing truth-in-billing rules; (4) whether it should impose network outage reporting requirements on broadband Internet access service providers; (5) whether broadband Internet access service providers should be required to seek Commission authority prior to discontinuing service to customers; (6) whether it should impose a rate averaging requirement; (7) what role states and localities should have in protecting consumers and enforcing consumer protection regulations; and (8) what complaint processes, such as the Commission’s informal complaint process, are available to consumers to resolve disputes with broadband Internet access service providers.³² None of these are among the primary issues faced by broadband Internet customers.³³ And the Commission need not address these concerns in the abstract, but rather should identify evidence that the marketplace is failing to serve consumers’ interests before even considering possible regulation. We respectfully recommend that the Commission continue to

³¹ *On His Way Out, Perlman Says Texas’ Effort on Competition in the State “Is Not Complete”*, Power Markets Week, Sept. 1, 2003, at 21 (quoting Pat Wood, then-Chairman of FERC).

³² *See Notice* ¶¶ 148-159.

³³ Residential broadband subscribers are far more likely to be troubled by unwanted commercial e-mail (“spam”), spyware and adware, phishing and pharming, and viruses. Notably, these problems are caused by entities *other than* broadband Internet access providers, and broadband Internet access providers are compelled to expend enormous resources to combat them.

monitor the marketplace for anti-consumer or anticompetitive conduct and impose any remedies on a case-by-case basis where the marketplace itself does remedy the conduct.³⁴

If the Commission identifies real evidence requiring regulatory intervention, any rules should be applied even-handedly -- not just to facilities-based broadband access providers, but also to narrowband and broadband service providers, regardless of whether they are facilities-based or rely on facilities provided by others and regardless of the underlying technology used to deliver their services. The consumer protection interests and expectations of broadband users do not vary depending on whether they obtain Internet services from a cable operator such as Comcast, a telephone company like Verizon, or a non-facilities-based provider like Earthlink. Good public policy would apply whatever rules are demonstrably needed in an even-handed fashion to all Internet access service providers.

Bearing these principles in mind, Comcast makes the following observations and recommendations with respect to the specific issues discussed in the *Notice*:

- **Privacy.** Consumers have a strong and legitimate interest in safeguarding their privacy. However, there already exist privacy requirements in the Communications Act.³⁵ Comcast complies with the privacy requirements of Section 631 in connection with its cable Internet service. Comcast's privacy practices are clear and are accessible to all of its customers. Comcast is committed to ensuring that its privacy practices meet its customers' privacy expectations, and the company's Chief Privacy Office ensures that Comcast's privacy practices continue to meet all legitimate consumer interests.

Imposing entirely new privacy restrictions on cable Internet providers is neither

³⁴ It may be that many of the problems that broadband subscribers face are more appropriately addressed by the Federal Trade Commission than the Federal Communications Commission. And some may require action by Congress.

³⁵ See 47 U.S.C. §§ 222 (establishing privacy requirements for telecommunications services), 551 (establishing privacy requirements for cable services).

necessary nor warranted. To the extent the Commission may wish to use Title I authority to establish privacy requirements for *other* broadband Internet providers, that is not Comcast's issue. But the best solution would be for *Congress* to prescribe a uniform Federal privacy regime that applies equally to *all* broadband Internet providers -- whether they provide "access" to the Internet or not. The Commission should support legislation to this effect.

- **Slamming.** There is no need for the Commission to adopt regulations governing the process by which broadband Internet access service providers sign up new customers. In contrast to plain old telephone service ("POTS"), switching broadband Internet access service providers requires significantly more active customer involvement -- installation of new equipment and software, password access to the network, interaction with customer service representatives, etc. -- than simply giving consent over the phone. Thus, it is not technically feasible for a provider to switch a customer's broadband service absent the customer's express consent. And there is zero evidence that slamming-type problems have occurred in the broadband marketplace.
- **Truth-in-Billing.** There is no evidence that new rules governing the contents of consumers' bills for broadband service are needed.³⁶ Comcast and other providers have every incentive to ensure that their customers' bills are easy to read and are accurate. When Comcast is notified that an error has occurred, Comcast resolves the error with the customer without the intervention of the Commission. Keeping its customers satisfied is one of Comcast's top priorities. The availability of a competitive broadband alternative in each of the markets Comcast serves ensures that Comcast addresses any customer billing issues and other customer service concerns immediately and effectively.³⁷ Moreover, federal and state laws of general applicability already protect consumers from fraudulent charges on their bills.³⁸

³⁶ The Commission's truth-in-billing rules were originally adopted in the telephone context because of problems associated with itemizing various taxes and fees (*e.g.*, subscriber line charges, Universal Service Fund charges, number portability fees, etc.) on customers' bills, and because of cramming. In the broadband Internet service context, none of these issues exist.

³⁷ *Comcast Cable Internet Reply Comments* at 28 ("Cable companies are fully aware that, if they do not provide the level of customer service that consumers require, they will drive away the customers they have and diminish their ability to attract new ones in the future.").

³⁸ *See, e.g.*, 15 U.S.C. § 45(a) (making it unlawful to engage in unfair or deceptive practices that affect commerce); 16 C.F.R. § 308.7 (2005) (Federal Trade Commission rules regulating billing errors and consumer rights of remedy); La. Rev. Stat. § 45:1166.2 (2005) (instructing the Louisiana Public Service Commission to adopt rules and fines against telecommunications providers that engage in billing and collecting of cramming); N.H. Rev. Stat. Ann. § 378:46 (2005) (prohibiting cramming and establishing maximum fine of \$1,000 per offense); N.M. Stat. Ann § 63-9G-5 (2005) (prohibiting cramming and establishing a maximum fine of \$10,000 per offense).

- **Network Outage Reporting.** There is no evidence that the Commission needs to extend network outage reporting rules to mass market broadband services. Service providers already have powerful marketplace incentives to minimize network downtime and to fix problems expeditiously.³⁹ The failure to provide customers with the services they demand at the time they demand them will inevitably lead to the loss of customers to competitors.
- **Section 214 Discontinuance.** With the exception of telephone companies providing DSL, the Commission has never required ISPs, whether they be narrowband or broadband providers, to seek permission from the government in order to enter or exit a market. Yet the Internet access marketplace has thrived, and where certain ISPs have failed, others have been there to provide consumers with the services they need. For example, when confronted with the collapse of Excite@Home in 2002, Comcast devoted extraordinary financial and personnel resources to the construction of its own network and to the successful migration of one million @Home customers to the Comcast network within a matter of weeks. It did these things because customer needs, and competitive pressures, required it to do so. There are sufficient competitive broadband alternatives such that regulation of entry and exit from the marketplace is not needed or warranted.⁴⁰
- **Section 254(g) Rate Averaging Requirements.** Adopting a rate averaging rule for broadband access services would be a major and unnecessary step into economic regulation that the Commission has wisely refrained from imposing. In the order accompanying the *Notice*, the Commission stated that it “will not hesitate to adopt any *non-economic* regulatory obligations that are necessary to ensure consumer protection,”⁴¹ yet here it proposes to impose an economic regulation that governs the prices charged for broadband services to rural consumers in relation to those in more densely populated areas. But a rate averaging requirement is not necessary to protect consumers.

Although Comcast generally charges the same prices for high-speed cable Internet across

³⁹ It is not clear what statutory provision could serve as a basis for the Commission to exercise ancillary jurisdiction to impose reporting requirements concerning the provision of unregulated information services.

⁴⁰ The Commission has recognized “that ease of exit is a necessary part of a truly competitive market.” *In re Policies and Rules Concerning Rates for Competitive Common Carrier Servs. and Facilities Authorizations Therefor*, First Report & Order, 85 F.C.C.2d, 1, 7 ¶ 18 (1980). In 1999, the Commission modified the Section 214 certification requirements to make it easier for competitors to exit the marketplace. See *In re Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Indep. Tel. & Telecomms. Alliance*, Report & Order and Second Memorandum Opinion & Order, 14 FCC Rcd. 11364, 11378 (1999). The Commission acknowledged that “significant barriers to exit” may serve to impede entry by potential market players, and drew a connection between “reduc[ing] regulatory exit burdens and advanc[ing] Congress’ pro-competitive and de-regulatory policies.” *Id.* ¶ 26.

⁴¹ *Notice* ¶ 111 (emphasis added).

the country, these pricing decisions are and should remain a marketplace matter. Comcast is aware of no evidence that broadband prices are materially higher in rural areas than in more densely populated areas. Moreover, any government intrusion into these marketplace decisions would need to take account of the subsidies that telephone companies, but not cable companies, can typically obtain for their POTS; once the network is subsidized for POTS, the incremental costs of providing broadband may not be substantial.

- **Federal and State Involvement.** Broadband Internet access services are *interstate* information services that are not and should not be subject to state and local regulation.⁴² Comcast urges the Commission to ensure that any regulation of the Internet it adopts be enforced by the Commission or, at a minimum, that every delegation of enforcement authority be closely supervised by the Commission. Broadband Internet service providers with nationwide networks should not be subject to the possibility of fifty different types of enforcement proceedings and interpretations of the Commission's rules. If the Commission determines that states and localities should have a role in enforcing Commission regulations, the Commission should clearly delineate the process for enforcement proceedings and the states' and localities' responsibilities, and these should apply equally to *all* broadband Internet providers.
- **Consumer Options for Enforcement.** Comcast supports an informal consumer complaint process at the Commission. The Commission's Consumer and Governmental Affairs Bureau has established an easy and informal process by which consumers may file complaints against service providers.⁴³ Under this process, when a consumer has a complaint, he or she can file an informal complaint electronically on the web, by mail, by e-mail, by phone, or by fax. The Commission then tries to coordinate a resolution to the complaint with the consumer and the service provider. The Commission has been successfully handling informal complaints about cable Internet service for several years.⁴⁴ Notably, despite the presence of 24.6 million cable Internet subscribers in the

⁴² See *Cable Internet Declaratory Ruling*, 17 FCC Rcd. 4798 ¶ 59 (“Having concluded that cable modem service is an information service, we clarify that it is an interstate information service.”); *In re GTE Tel. Operating Cos.; GTOC Tariff No. 1; GTOC Transmittal No. 1148*, Memorandum Opinion & Order, 13 FCC Rcd. 22466 ¶ 1 (1998) (concluding that ADSL service “is an interstate service and is properly tariffed at the federal level”); *Notice* ¶ 106 n.333.

⁴³ See Consumer & Governmental Affairs Bureau, FCC, *Filing a Complaint with the FCC Is Easy*, at <http://www.fcc.gov/cgb/complaints.html> (last visited Dec. 29, 2005).

⁴⁴ See generally FCC, *Quarterly Inquiries and Complaints Reports* (listing reports since the first quarter of 2002), at <http://www.fcc.gov/cgb/quarter/welcome.html> (last visited Dec. 22, 2005).

United States, in the first three quarters of 2005, the Commission only received 105 complaints about cable Internet service.⁴⁵

⁴⁵ See FCC, *Quarterly Report on Informal Consumer Inquiries and Complaints* 9 (Aug. 12, 2005); FCC, *Quarterly Report on Informal Consumer Inquiries and Complaints* 9 (Sept. 28, 2005); FCC, *Report on Informal Consumer Inquiries and Complaints* 9 (Nov. 4, 2005). The Commission's complaint statistics reflect relatively few complaints about *any* of the services provided by cable companies. Over the past four years, wireline service providers have generated an average of 13,013 consumer complaints per quarter, while "Cable" (which actually includes DBS service providers as well) has generated an average of only 222 complaints per quarter. See generally FCC, *Quarterly Inquiries and Complaints Reports* (listing reports since the first quarter of 2002), at <http://www.fcc.gov/cgb/quarter/welcome.html> (last visited Dec. 22, 2005). The other two main categories of complaints, "Broadcasting" and "Wireless," have also generated much higher averages for numbers of complaints than "Cable" has -- 117,698 per quarter and 5,731 per quarter, respectively. See *id.*

V. CONCLUSION

The broadband marketplace today is intensely competitive and rapidly changing. The success of the marketplace is due in large part to Congress's and the Commission's regulatory restraint. To date, marketplace forces have prevented the kinds of anti-consumer and anticompetitive conduct on which the *Notice* focuses, and there is no evidence that government intervention is now needed to protect consumers. Comcast strongly urges the Commission not to adopt new regulations based on hypothetical problems but, instead, to continue its vigilant but restrained oversight.

Respectfully submitted,

Joseph W. Waz, Jr.
COMCAST CORPORATION
1500 Market Street
Philadelphia, Pennsylvania 19102

James R. Coltharp
COMCAST CORPORATION
2001 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006

Thomas R. Nathan
COMCAST CABLE COMMUNICATIONS, LLC
1500 Market Street
Philadelphia, Pennsylvania 19102

/s/ James L. Casserly
James L. Casserly
Ryan G. Wallach

WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238
(202) 303-1000

Attorneys for Comcast Corporation

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