

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.
REGARDING NOTICE OF PROPOSED RULEMAKING**

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Qwest Communications International Inc. (“Qwest”), through counsel and on behalf of itself and its affiliates, submits the following initial comments in connection with the Federal Communications Commission’s (“Commission”) *Report and Order and Notice of Proposed Rulemaking* [hereafter the “*Broadband Order and NPRM*” or where applicable “*Broadband Order*” or “*Broadband NPRM*”] in the above-referenced docket -- specifically, regarding the potential extension of certain regulatory requirements to wireline broadband Internet access service (hereafter, “Internet access service”) and Internet access service providers.¹

¹In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, 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, Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises, Consumer Protection in the Broadband Era, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, *Report and Order and Notice of Proposed Rulemaking*, FCC 05-150, rel. Sept. 23, 2005, *appeals pending sub nom., Time Warner Telecom Inc. v. FCC*, No. 05-4769 (3rd Cir. pet. for rev. filed Oct. 26, 2005).

I. INTRODUCTION AND SUMMARY: COMPETITIVE SERVICES SHOULD BE DISCIPLINED BY MARKET FORCES ABSENT A DEMONSTRATION OF HARM TO THE PUBLIC

In the *Broadband Order*, the Commission concludes correctly that “the appropriate framework for wireline broadband Internet access service, including its transmission component, is one that is eligible for a lighter regulatory touch.”² As a result, the Commission finds that, among other things, Internet access service is an information service and that its underlying transmission component is not a telecommunications service.³ Additionally, the Commission ruled that, while Internet access service is an information service, the requirements of the *Computer Inquiry* proceedings (e.g., comparably efficient interconnection (“CEI”), Open Network Architecture (“ONA”), etc.) which normally apply to information services will not apply to the Bell Operating Company (“BOC”) provision of such services.⁴ Instead, the *Broadband Order* imposed a new, substantially reduced regulatory framework for Internet access service.⁵

The Commission has adopted the correct regulatory approach to broadband offerings. Competitive information services, offered by a broad range of service providers, do not require a detailed regulatory scheme such as that typically found in Title II. The fact of competition itself means that the market can generally be counted on to discipline prices, terms and conditions, and business practices. Only if the presumed market discipline is shown to fail in some particular instance or aspect should more intrusive federal regulatory requirements be appended to the service offerings.

² *Id.* ¶ 3.

³ *Id.* ¶ 106.

⁴ *Id.* ¶¶ 41-46.

⁵ *Id.* ¶¶ 86-95, 98-101.

The *Broadband NPRM* reflects a regulatory approach inconsistent with the relief accomplished in the *Broadband Order* and with the presumption of market discipline referenced above. With no demonstration that the market has failed with regard to a wide variety of issues (e.g., customer privacy, customer billing, changes of service provider), the Commission already seeks comment on whether it should burden broadband services with the heavier-hand of Title II common carrier regulation.

The Commission should refrain from enacting such rules or regulations in the absence either of a market failure or a demonstrated material competitive disparity between carriers and other service providers. While it may be necessary to extend some of the Commission's consumer protection or carrier regulation principles to broadband service providers, it should not do so immediately. Rather it should adopt a "wait and see" attitude, remaining committed to act in those circumstances where the public interest requires intervention to protect against public harm. This approach is consistent with the *Broadband Order* and sound regulatory principles and policy.

The Commission, in the *Broadband NPRM*, also contemplates extending its current telephony service outage reporting requirements to Internet access service. As discussed in greater detail below, the Commission should take a similar approach with respect to these service outage aspects of the *Broadband NPRM*-- and refrain, at least at this time, from imposing service outage reporting on Internet access service.

II. QWEST OPPOSES THE EXTENSION OF OUTAGE REPORTING TO BROADBAND INTERNET ACCESS SERVICE

Qwest opposes the extension of the Commission's outage reporting requirements to Internet access service. Network outage reporting is less relevant in the context of Internet access service than telephony service. A better approach would be for the Commission to rely

on market forces and industry efforts to address Internet access service outage reporting. It is also clear that there are substantial technical, economic and other impediments that would affect the ability of Internet access service providers to comply with outage reporting requirements like those currently imposed on traditional telephony service providers. At bottom, the costs of extending outage reporting requirements to Internet access service would greatly exceed the potential benefits of such regulation.

Thus, in response to the Commission's query whether it should "adopt requirements that differ depending on the nature of the facility or type of customer served,"⁶ Qwest believes the Commission should refrain altogether from imposing outage reporting requirements on Internet access service. Extending service outage reporting requirements to broadband service providers would burden service providers by stifling the very investment incentives that the Commission's recent ruling was designed to encourage. If the Commission determines that it must impose network outage reporting obligations in a broadband environment, there are a number of issues that it must be careful to address. The question of the types of facilities and customers that might be covered is just one of the important questions to be studied. If the Commission is intent upon proceeding with the imposition of some form of outage reporting on Internet access service, it should initiate a separate rulemaking addressing all the specifics of what such a reporting regime should look like and focusing on the nature of broadband services. That rulemaking should contain its own tentative conclusions regarding what might or might not be required in such a regime. There should be no assumption that the criteria associated with the reporting regime imposed on telephony common carriers is the appropriate criteria when crafting a reporting methodology for broadband providers.

⁶ *Id.* ¶ 154.

A. Internet Access Service

The Commission has defined Internet access service for purposes of this proceeding as follows:

Wireline broadband Internet access service . . . 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. Wireline broadband Internet access service, like cable modem service, is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission such that the consumer always uses them as a unitary service. For example, as we explained in the *Wireline Broadband NPRM*, where wireline broadband Internet access service enables an end user to retrieve files from the World Wide Web, the end user has the capability to interact with information stored on the service provider’s facilities. To the extent a provider offers end users a capability to store files on the service provider’s computers to establish “home pages,” the consumer is utilizing the “capability for . . . storing . . . or making available information.” In short, providers of wireline broadband Internet access service offer subscribers the ability to run a variety of applications that fit under the characteristics stated in the information service definition.⁷

In stating this definition, the Commission stressed that this definition included the transmission component underlying Internet access service, “whether that component is provided over all copper loops, hybrid copper-fiber loops, a fiber-to-the-curb or fiber-to-the-premises (FTTP) network, or any other type of wireline facilities, and whether that component is provided using circuit-switched, packet-based, or any other technology.”⁸ The Commission also recognized that for some service providers, Internet access service includes the deployment of wireline broadband technologies (such as Digital Subscriber Line (“DSL”)) that utilize asynchronous transfer mode (“ATM”) or frame relay transport in their networks.⁹

⁷ *Id.* ¶ 9 (footnotes omitted).

⁸ *Id.* n. 15.

⁹ *Id.*

The potential impact on a service provider like Qwest of any proposed outage reporting for Internet access service is sweeping. Qwest provides both retail and wholesale Internet access services. Thus, while the *Broadband Order and NPRM* is not at all clear on this point, the proposed outage reporting could conceivably encompass anything on the transmission path from an end user to the Internet. In other words, this could encompass, for example, the loop or other facility directly connecting to the end user, the digital subscriber line access multiplexers (“DSLAM”) (which could be located at a remote terminal or a central office), ATM connectivity to the Internet service provider’s (“ISP”) radius server which accesses the Internet cloud, the Internet cloud itself and the multitude of servers and other Internet protocol (“IP”) equipment and functionality necessary to accomplishing Internet access service.

B. The Purposes Of Outage Reporting Do Not Extend To Internet Access Service In Its Current State

The purposes of the Commission’s outage reporting regime do not extend to broadband Internet access service -- at least in its current state. The Internet has thrived precisely because it is a “best effort” communication path without extensive redundancy features. The inherent design of the Internet itself and its underlying packet-switching technology is to deliver messages even if congestion or delays (*e.g.*, router problems, etc.) occur. Much of the Internet is supported by “self-healing” topography. As a result, when trouble is encountered, traffic is re-routed and the trouble often goes undetected by the network provider. While this makes for an effective communications technology, it also makes it difficult or impossible for network operators to ascertain when such problems may have occurred or to begin to determine the number of users impacted. The Internet was also designed to be a shared network and therefore has no single owner.

In short, the purposes of outage reporting simply do not extend to Internet access

in its current state. Moreover, extending such regulation to Internet access service is contrary to the Commission's long-standing and successful effort to avoid burdensome regulation of the Internet.

C. The Costs Of Internet Access Service Outage Reporting Would Greatly Exceed The Benefits

Again, the Commission, in the *Broadband Order and NPRM*, does not give a clear definition of just what facilities and equipment it may view as encompassed by any outage reporting rules extended to Internet access. Without such a definition in hand, it is difficult to precisely estimate the burden that Qwest would incur in complying with Internet access outage reporting. Obviously, any Internet access service outage reporting requirement should be narrowly tailored. Regardless, however, it is clear that Qwest would incur considerable costs that would outweigh any benefit that might be obtained by such reporting. Again, this proposal could conceivably result in Qwest having to report covered outages in connection with thousands of DSLAMs that service a small number of subscribers to Internet access services, ATM facilities that are essentially private network facilities to Qwest or other ISPs, or the great variety of IP equipment (*e.g.*, radius servers) that give access to the Internet cloud. The number of facilities for which Qwest would have to perform this expensive process would increase significantly from that which is covered by the current outage reporting rules. Of course, Qwest would first have to develop processes and functionality to identify when potentially reportable outages occur in the first place. Providers like Qwest do not track for outage reporting purposes all of the types of facilities that might fall within the kind of reporting obligation potentially contemplated by the Commission. Accordingly, even if the proposed new outage reporting obligation were clarified, carriers would face significant burdens crafting a compliance infrastructure to capture information about and report on outages.

Qwest would then face the added expense and manpower requirements of preparing and filing reports for each such event. If the reporting structure is the same as that currently applied, multiple reports for each outage would be required.

In light of the above, while it is difficult to provide precise information about the potential burden given the lack of a clear statement of the proposed new reporting obligation, it is clear that the anticipated costs to carriers of the proposed expansion of the Commission's outage reporting rules to Internet access clearly outweigh any benefit that might be obtained.

D. The Current Outage Reporting Obligations For Traditional Telephony Already Cover Internet Access Service To Some Extent

While, as described above, it does not make sense to extend the burden of outage reporting to Internet access service at this time, it is notable that the Commission already gets a partial view into outages that may impact Internet access through its existing major infrastructure reporting rules. Part of the architecture that supports Internet access services provided by Qwest and other service providers is wireline DS3 facilities. Outages on these facilities are already captured under the current rules.

III. IF NETWORK OUTAGE REPORTING IS TO BE EXTENDED TO INTERNET ACCESS SERVICE, THE COMMISSION MUST PROCEED MORE CAUTIOUSLY AND ADDRESS NUMEROUS IMPORTANT CONCERNS

For the reasons discussed above, the Commission should not extend service outage reporting to Internet access service at this time. If the Commission is intent upon proceeding with the imposition of some form of Internet access service outage reporting, it should, at the very least, recognize that there are fundamental differences between the Public Switched Telephone Network ("PSTN") and the Internet and ensure that any reporting requirements for the Internet reflect a new paradigm specific to Internet network architecture. In the event the Commission is determined to extend its outage reporting requirements to Internet access service,

Qwest requests that it, at the very least, proceed more cautiously and only impose such requirements after a more complete record can be developed and numerous important concerns are addressed.

To begin with, as discussed above, the Commission has not provided a clear definition of just what facilities may be encompassed by any proposed outage reporting for Internet access service. The Commission should not extend outage reporting to Internet access service until it has formulated a clear statement defining what types of facilities and customers would be covered and carriers have had an opportunity to comment on the specific proposed definition. Indeed, the Commission should not do so until it has provided detailed proposed rules to accomplish any contemplated extension of outage reporting to Internet access. This would be best accomplished through a separate rulemaking on this subject.

When crafting proposed rules, the Commission should also be careful, among other things, to ensure that any reporting requirement is triggered at a sufficiently high threshold that only significant outages need be reported. In other words, at a minimum, there should be no reporting requirement for outages impacting individual remote DSLAMs as they, by definition, can only serve a small number of subscribers.¹⁰ Similarly, any reporting requirements for Internet access should not extend to such functions as an outage that impacts Internet content -- for example, if a web site is not accessible for a period of time due to a failure in the facilities or equipment that accomplish the availability of the web site as opposed to the subscriber's Internet access. Any Internet outage reporting should be Internet specific. In other words, while a 30,000 line/30 minute outage may be a significant outage for the PSTN, it is not, due to the capacity of the fiber used to access the Internet, a significant Internet access outage. These are

¹⁰ Additionally, only a small percentage of subscribers assigned to individual DSLAMs typically take service.

just examples of the kinds of concerns that must be addressed before extending outage reporting to Internet access service. Indeed, in light of the complex nature of such an ambitious exercise, the Commission should consider using the model previously followed in the outage reporting area -- allow the industry to develop voluntary reporting practices before imposing mandatory requirements.

IV. CONCLUSION

For the foregoing reasons, Qwest respectfully requests that the Commission take the actions described herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. REGARDING NOTICE OF PROPOSED RULEMAKING** to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 05-271, 2) served via e-mail on Ms. Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission at janice.myles@fcc.gov, and 3) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier
Richard Grozier

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