

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

**REPLY COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ hereby submits these reply comments in response to the Federal Communications Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.² NTCA supports those commenters urging the Commission to refrain from imposing the regulations identified in the NPRM on broadband Internet access service providers.³ The consumer protection regulations are not needed because no specific consumer harms have been identified and the competitive conditions in the broadband market provide ample incentive for carriers to provide their customers with the protections. Further, the Commission has failed to adequately describe its proposed regulations sufficiently for small companies to comment on the potential burdens as required by the Regulatory Flexibility Act.

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities

² *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Notice of Proposed Rulemaking, FCC 05-150 (rel. Sept. 23, 2005) (NPRM).

³ See Comments of AT&T, BellSouth, Cingular, Comcast, CTIA, NCTA, OPASTCO, Qwest, Telecommunications Industry Association, Time Warner, United States Telecom Association, Verizon.

The regulations identified in the NPRM were adopted to address real problems in the wireline voice arena. Historically, wireline voice providers faced little competition for customers leading to the potential for abuse. However, the broadband service market is highly competitive. Eighty-five percent of respondents to a NTCA survey indicated they face competition in the provision of advanced services from at least one other service provider, up from 76% in 2004.⁴ This continues a long-term trend of increasing competition, as only 66% of respondents to the 2003 survey indicated they faced competition and only 43% in the 1999 survey. Current competitors include national ISPs, satellite broadband providers, cable companies and electric utilities. As NTCA prepares to survey its members in 2006, we expect continued increase in the percentage of members facing broadband competition. The competitive nature of the industry must be considered as the Commission evaluates the need for future consumer protection regulation.

Consumers of broadband services have a choice in providers. If a customer is unhappy with the service, has his privacy violated, service changed without authorization, cannot understand the charges on his bill, or faces service disruptions, the consumer will go to a competing provider for service. Competitors are ready and willing to provide better service at a better price to an unhappy potential customer. Broadband providers will take the steps necessary to retain their customers. The competitive market works better than regulation in providing the consumer with what he wants and needs.

Currently, there is no demonstrated need for consumer protection regulation in the broadband era. There is no evidence nor a record of widespread abuse. Some of the consumer issues identified in the NPRM are not even potential problems in the broadband arena.

⁴ See, NTCA's 2005 Broadband/Internet Availability Survey Report, www.ntca.org.

Slamming a broadband customer is virtually impossible due to the need to switch out networks and equipment. If a customer is unhappy with the number of network outages, the customer will switch providers. The filing for approval of a discontinuance of service is unnecessary as consumers have other options for broadband service.

If the Commission at some later date finds that the competitive market has failed and the broadband providers do not provide an adequate level of service or protect their customers, the Commission can and should adopt new regulations. At this point, however, regulations are premature and unnecessary.

The Commission should also consider that NTCA's members are rural ILECs. These carriers face significant hurdles in bringing broadband services to their customers. Rural carriers lack the economies of scope and scale of the large providers. They provide service to sparsely populated areas, often covering difficult terrain. Rather than spend precious resources to comply with new consumer protection regulation, rural carriers must be permitted to concentrate their efforts on building out their service territory.

NTCA agrees with OPASTCO that the Commission has not sufficiently considered how new consumer protection regulation could impact small companies and has presented a deficient initial regulatory flexibility analysis (IRFA).⁵ Neither the NPRM, nor the IRFA provides any details about the regulations. Commenters have no information upon which they may base an estimate of the costs or quantify the burdens of new rules. Before it adopts new rules, the Regulatory Flexibility Act demands that the Commission evaluate the disproportionate costs and burdens the rules would have on small carriers and describe any significant alternative approaches that the Commission considered in reaching its conclusions.

⁵ OPASTCO Comments, pp 7 – 8.

CONCLUSION

The Commission is considering intrusive and burdensome new consumer protection regulation in this proceeding. There is neither a demonstrated need for new regulation, nor evidence that competitive market forces are failing or will fail to protect consumers. Rural carriers must be permitted the opportunity to concentrate their efforts on the continuing build out of broadband services to the most sparsely populated areas, rather than on complying with burdensome and unnecessary regulation. Broadband deployment will be threatened if the Commission insists on imposing new, costly regulation on rural carriers. If the Commission moves forward with broadband consumer protection regulation, it must document the concerns of small carriers and consider for them less burdensome alternative regulation.

Respectfully submitted,

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March 1, 2006

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 05-271, FCC 05-150 was served on this 1st day of March 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons.

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