

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS OF VERIZON

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INTRODUCTION

The interests of broadband consumers will be protected through the forces of competition among providers of Title I broadband services. There is no reason, therefore, to impose any of the costly and inefficient regulations that are the subject of this proceeding on this nascent and vibrantly competitive industry. Congress enacted the Telecommunications Act of 1996 for the express purpose of promoting competition, reducing regulation, and encouraging the rapid deployment of new telecommunications technologies. Section 706 reflects a national policy of encouraging the deployment of advanced telecommunications capability to all Americans through, among other things, removing regulatory barriers to infrastructure investment. It would be inconsistent with that national policy to engage in anticipatory regulation where there has been no demonstration of an actual problem that needs to be addressed.

The record in this proceeding contains no evidence that the market is somehow failing to protect consumers or that the range of possible regulations that the *NPRM* asks about is either necessary or desirable. Instead, the comments reflect a broad consensus among the traditional telephone companies, wireless carriers, rural carriers, cable providers, and equipment

¹ The Verizon telephone companies (“Verizon”) are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A to Verizon’s opening comments filed on January 17, 2006.

manufacturers that the Commission should continue to permit market forces to operate, at least until such time as clear and convincing evidence emerges that some targeted regulation is required.

A few state commissions, interest groups, and ratepayer advocates have called on the Commission immediately to adopt the full suite of consumer regulations that were originally developed to protect what were then characterized as captive ratepayers in a fully-regulated, monopoly environment for the provision of traditional circuit-switched local exchange service. But, as Verizon and others have demonstrated, the Title I broadband services at issue in this proceeding are competitive services that bear no resemblance to the legacy Title II common-carrier services in the market environment of years gone by for which the proposed regulations were initially conceived. Specifically, broadband Internet access services are information services that the Commission has historically refrained from regulating, and this has resulted in substantial investment and innovation to the benefit of broadband consumers. In addition, stand-alone broadband transmission services offered on a private-carriage basis are not only subject to significant competition, but they are typically purchased by sophisticated business customers who are perfectly capable of negotiating for the kinds of end-user-oriented consumer protections that the Commission is now contemplating.

In addition to refraining from imposing the kinds of non-economic regulations at issue in this proceeding – and, in order to further the deregulatory objectives of federal broadband policy – it is critically important for the Commission to confirm expressly that any state efforts to require the same kinds of regulations that this Commission declined to impose as unnecessary and counterproductive are preempted. A number of different commenters specifically urge the Commission to allow states to develop their own regulations and standards, oblivious to the

inconsistent patchwork of requirements that would thereby be created. These non-economic regulations are unnecessary and would undermine the Commission's decision that deregulation will best further federal broadband policy. Permitting states to impose similar regulations on broadband services and facilities after the Commission decides that such regulation is unnecessary would undermine the Commission's policies.

Finally, there is no dispute among the commenters that, if the Commission adopts any new regulations for broadband services, it must apply them equally to all wireline broadband providers.

DISCUSSION

I. THE COMMISSION SHOULD LET MARKET FORCES ADDRESS THE ISSUES RAISED IN THE *NPRM*

As Verizon and many others explained in their opening comments, the extraordinary growth in competition among providers of broadband Internet access services and private-carriage broadband transmission services means that consumers who are unhappy with their service can simply switch to another provider.² Because they know this, providers of broadband information and private-carriage services have powerful incentives to serve their customers' interests or lose them to competing service providers. As the Telecommunications Industry Association ("TIA") recognizes, "[i]mposition of the types of regulations considered in the *NPRM*, prior to demonstrable evidence of their need, will serve as weights on investment, innovation and competition among and between broadband platforms."³ Choosing not to impose such regulations furthers Congress's goal in section 706 of "utilizing . . . regulating methods that

² See, e.g., Verizon Comments at 3-8; BellSouth Comments at 5-8; Comcast Comments at 3-9; AT&T Comments at 4-7; Time Warner Comments at 3-5; CTIA Comments at 10-11; USTelecom Comments at 2-7.

³ TIA Comments at 2-3.

remove barriers to infrastructure investment” in order to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”⁴

A number of commenters nevertheless assert that market forces will prove insufficient and that the Commission ought to impose the full panoply of Title II consumer protections.⁵ The most striking feature of these commenters’ submissions, however, is the complete lack of any evidence that the market is somehow failing or that consumers are being harmed. NASUCA, for example, simply asserts that the “Commission’s slamming regulations should . . . be applied equally to providers of voice services on the broadband network,” without any explanation of how slamming is even possible for broadband services or why it is even a problem.⁶ Similarly, the New Jersey Ratepayer Advocate simply states, without any evidence or justification, that “regulation of broadband Internet access providers is necessary to ensure that the deployment of new technology does not erode the framework of consumer protection policies and rules that the Commission and state regulators have spent years to design and enforce.”⁷ But these commenters simply fail to recognize that such regulations impose enormous costs that are ultimately paid by the very consumers they are purporting to protect.

Competition among providers of broadband Internet access services and private-carriage transmission services makes these broadband services fundamentally different from the Title II services for which these regulations were originally designed. The regulations identified in the

⁴ Pub. L. No. 104-104, § 706, 110 Stat. 153 (*reprinted at* 47 U.S.C. § 157 note); *see also* Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket Nos. 02-33 et al., FCC 05-150, ¶ 3 n.8 (FCC rel. Sept. 23, 2005) (“*Title I Broadband Order*”).

⁵ *See, e.g.*, AARP Comments at 2-3; Consumer Groups’ Comments at 8-9; NJ Ratepayer Advocate Comments at 4-6; NASUCA Comments at 28-30.

⁶ NASUCA Comments at 31.

⁷ NJ Ratepayer Advocate Comments at 4.

NPRM all originated in a “one-wire world” that no longer exists – which is especially true in the case of highly competitive broadband services – and were intended to remedy problems that regulators could identify with specificity. In contrast, as Verizon explained in its opening comments, the Commission has never imposed on providers of information services the kinds of regulations under consideration in the *NPRM*. Similarly, the sophisticated purchasers of private-carriage transmission not only have several alternative sources for such services, but they are also able to negotiate over the precise terms on which they will receive service. Regulation of any kind is unnecessary to protect these sophisticated customers and would undermine the flexibility of the private-carriage regime that the Commission sought to encourage.⁸

Moreover, the Commission has long recognized that “[c]ompetitive markets are superior mechanisms for protecting consumers” than regulations, for such markets “ensur[e] that goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production.”⁹ As Verizon explained in its opening comments, providers of broadband Internet access services and of broadband private-carriage transmission services have every incentive to offer consumers the kinds of protections and information that they want.¹⁰ The availability of competitive alternatives enables consumers to bargain for the kinds of

⁸ *Title I Broadband Order* ¶ 88.

⁹ First Report and Order, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, 12 FCC Rcd 15982, ¶ 263 (1997) (stating that “using a market-based approach should minimize the potential that regulation will create and maintain distortions in the investment decisions of competitors as they enter local telecommunications markets”), *petitions for review denied, Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998); *see also* Second Report and Order, *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, ¶ 173 (1994) (stating that “in a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service set by carriers who lack market power”).

¹⁰ *See Verizon Comments* at 6-8.

protections they need without discouraging the development and deployment of services they desire. Market forces are far more efficient and successful at striking such a balance than any regulator can possibly be. Therefore, given the total lack of evidence that there is a problem that needs fixing here, the Commission should refrain from imposing unnecessary regulation.

In none of the specific areas identified in the *NPRM* is it either desirable or necessary for the Commission to impose regulations. The commenters advocating such regulations have uniformly failed to provide any evidence that the benefits outweigh the costs.¹¹

In particular, there is no reason to impose anti-slamming rules on the provision of broadband Internet access services. Almost everyone agrees that slamming is effectively impossible, given that there is no practical way to switch a customer between DSL, fiber, cable modem or satellite Internet access providers without the customer's knowledge.¹² And even though intramodal slamming at the level of the information service may be technically feasible, the requirement to change passwords, e-mail and log-on information makes it extremely

¹¹ The Commission has recognized that, when “the regulations’ costs outweigh their benefits, or are no longer necessary to achieve the desired objectives, we must evaluate whether our obligations and objectives can be met in a manner that reduces or eliminates such costs. This becomes even more critical if there is evidence that the regulation actually impedes or frustrates the accomplishment of important statutory goals.” *Title I Broadband Order* ¶ 69.

¹² *See, e.g.*, AT&T Comments at 8 (“[A] competing broadband service provider seeking to ‘slam’ the subscriber would need to physically reconfigure the CPE from the original provider or enter the subscriber’s premises and substitute its own CPE for the original provider’s CPE – and do so without the subscriber’s knowledge. To put it mildly, the likelihood of this slamming scenario occurring in practice seems rather remote.”); Comcast Comments at 15 (“it is not technically feasible for a provider to switch a customer’s broadband service absent the customer’s express consent”); OPASTCO Comments at 5 n.7 (problem of slamming “does not appear to be applicable to broadband Internet access services”); NJ Ratepayer Advocate Comments at 5 (acknowledging that “the risks may not be as great simply because it may be impossible, based on equipment requirements, for a consumer to be slammed by a broadband supplier”). *But see* NARUC Comments at 12-13 (“the Internet environment may, in fact, prove to be more hospitable to slamming than traditional telephony services”).

unlikely. There is no justification for imposing regulations to deal with a problem that does not exist.¹³

With respect to truth-in-billing requirements, information service providers have never been subject to the Commission's regulations, and there is nothing in this record to justify extending those requirements at this time. As Verizon and others explain in their comments, providers of Internet access services are already subject to general consumer protection laws as well as oversight by the FTC.¹⁴ No commenter has provided any justification for this Commission's imposition of additional and redundant truth-in-billing requirements. Should problems arise in the future, existing state and federal rules regarding misleading and deceptive trade practices are there to address them, just as they do in other competitive markets.

The Commission's network outage reporting requirements have never been applied to broadband Internet access services, and there is no reason to do so now.¹⁵ Broadband Internet access services are highly competitive, and providers whose networks fail will lose customers to those who are able to provide reliable service. Providers, therefore, have strong incentives to ensure that network outages are kept to an absolute minimum.¹⁶ No commenter offers any

¹³ See also Comcast Comments at 15 ("there is zero evidence that slamming-type problems have occurred in the broadband marketplace"); Time Warner Comments at 9 ("The Commission plainly should not impose new regulations in the absence of any real-world concern.").

¹⁴ See Verizon Comments at 16; Comcast Comments at 15; AT&T Comments at 9-10.

¹⁵ NASUCA is wrong, therefore, to suggest that broadband providers are somehow seeking "*an exemption* from reporting requirements." NASUCA Comments at 38 (emphasis added). Rather, they are seeking to avoid having such requirements extended to broadband services for the very first time.

¹⁶ See NCTA Comments at 8. One indication of how market forces are currently working to ensure the proper functioning of broadband networks is reflected in the small number of complaints that the FCC has actually received from broadband subscribers. For example, in its most recent quarterly report on informal consumer inquiries and complaints, the Commission

evidence to suggest that network outage reporting will do any more than the competitive market is already doing to give users the kind of information they need to switch away from underperforming providers.

The Commission should not impose a “section 214-like” notice and approval requirement before a broadband service provider may lawfully discontinue a service. Competition in the marketplace for broadband services makes such regulations – which are part of the monopoly-regulated past – unnecessary.¹⁷ Customers whose service is being discontinued typically have terms in their service contracts that provide for termination notice, and these customers almost always have the choice of purchasing service from alternative providers. Imposing exit barriers will do nothing but discourage entry into new service areas. Congress clearly did not intend the section 214 discontinuance obligations to apply to providers of non-common carrier services.¹⁸

reported that, for the last quarter of 2005, there was an average of 142 complaints per month relating to DSL service. See *Quarterly Report on Informal Consumer Inquiries and Complaints Released* at 14, table (FCC Feb. 16, 2006). One analyst estimates that, during the same period, there were over 16 million DSL subscribers nationwide, see V. Shvets, *et al.*, Deutsche Bank, *4Q05 Preview: Reasonable Quarter, Bolstered by Wireless and Data* at 12, Fig. 8 (Jan. 18, 2006).

¹⁷ NARUC paradoxically draws the opposite conclusion: “As competition has grown, so too, has the need for proper notification by a carrier prior to exiting the market.” NARUC Comments at 15. But this preference for regulation is inconsistent with the Commission’s long-standing view that, even “less-than-perfectly competitive markets can constitute mechanisms for generating public benefits superior to non-price mechanisms such as reliance on regulatory or administrative processes.” Policy Statement, *In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*, 15 FCC Rcd 24178, ¶ 17 n.25 (2000); see also Fifth Annual Report, *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 13 FCC Rcd 24284, 24481 (1998) (concurring opinion) (“When Congress passed the Telecommunications Act of 1996, it affirmed the principle that when it comes to innovation and consumer choice, competition is preferable to regulation.”).

¹⁸ See 47 U.S.C. § 214(a) (providing that “[n]o carrier shall discontinue, reduce, or impair service to a community, or party of community, unless and until” a section 214 certificate is obtained) (emphasis added). A “carrier,” in turn, is defined as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire.” *Id.* § 153(10). Indeed,

Similarly, the Commission should not impose on providers of broadband services the rate-averaging requirements of section 254(g). Congress clearly intended that such rate regulation apply only to “interexchange *telecommunications services*”¹⁹ and not to the type of competitive services at issue here. Moreover, it would be entirely inconsistent with the Commission’s deregulatory policy to impose this form of intrusive economic regulation, and doing so would take away the very flexibility that the Commission intended to permit in order for providers to compete more effectively. As Verizon explained in its opening comments, broadband service to rural customers has increased substantially in recent years,²⁰ and there is no evidence that broadband prices are materially higher in rural areas than in more densely populated locations.²¹ In their comments, both Alaska and Hawaii stress the importance of the policies underlying section 254(g), particularly as broadband Internet access services affect “the ability of residents in rural areas to communicate and thus be integrated into American (and global) society today.”²² But neither State suggests that there is currently a problem with the prices that rural communities are paying for broadband services that requires the kind of intrusive economic regulation embodied in section 254(g). Verizon certainly shares the goal of ensuring that “residents of off-shore, remote and high-cost areas [are] able to communicate with

no commenter has suggested that section 214, by its terms, would apply to information services or private carriage.

¹⁹ 47 U.S.C. § 254(g) (emphasis added).

²⁰ See Verizon Comments at 24-25.

²¹ See Comcast Comments at 17; see also OPASTCO Comments at 2 (“The widespread competition that currently exists in the rural broadband market provides ample incentive for rural ILEC providers of broadband Internet access services to meet the consumer protection goals of the Commission and the Telecommunications Act of 1996.”).

²² Alaska Comments at 3-4; see also Hawaii Comments at 3 (recognizing that the “public interest goals of Section 254(g) continue to be important as broadband technologies provide consumers with a potential substitute for narrowband interexchange services”).

the rest of the nation,”²³ but until there is some evidence that competition and market forces are unable to achieve that goal, there is no justification for imposing drastic measures such as rate averaging. Indeed, imposing rate-averaging requirements would likely discourage price promotions and “delay price reductions in many areas.”²⁴

With respect to CPNI, providers of broadband services have responded to customer concerns about the use of their account and usage information by adopting privacy policies that spell out precisely how such information will be used.²⁵ There is simply no need to impose additional privacy regulations on Title I broadband services. Some commenters have suggested that market forces are somehow unable to protect customer privacy interests. NASUCA, for example, dismisses the privacy policies that companies have developed, asserting that “potential customers can hardly rely on such policies to differentiate among providers.”²⁶ Because “[m]ost consumers only discover a misuse of personal information after-the-fact, upon receiving a random piece of junk mail, a telemarketing call, or an indication of fraud based on identify theft . . . proactive and preventative measures are necessary to forestall consumer harm.”²⁷ NASUCA nowhere even claims that the industry’s voluntary privacy policies have failed. Instead, it argues that, because Congress and the FTC have imposed privacy regulations on other industries after

²³ Alaska Comments at 3.

²⁴ Time Warner Comments at 12; *see also* OPASTCO Comments at 4 (“imposing unnecessary and potentially burdensome regulations on rural ILECs’ broadband Internet access services . . . would divert scarce resources from the deployment and upgrade of facilities that are capable of providing broadband access to greater numbers of rural consumers without a corresponding benefit”); *see also* TIA Comments at 2-3.

²⁵ Verizon Comments at 11-13 & Attach. B.

²⁶ NASUCA Comments at 29; *see also* NARUC Comments at 10 (“CPNI is another area where market forces provide strong profit incentives for abuse.”).

²⁷ NASUCA Comments at 29.

reviewing evidence that consumers were being harmed, it should go ahead and impose similar regulations on the broadband industry in the absence of any such evidence.²⁸ NASUCA has it exactly backwards; because regulation imposes substantial costs on both the industry and consumers, it should only be used when it is clear that other, less burdensome measures have failed. None of the commenters has even alleged such a failure, let alone proven that it has occurred.

Finally, the Commission should not allow recent reports about misuse of customer information by “data brokers” to justify imposing unnecessary CPNI requirements on providers of broadband services. Instead, the Commission should work with the FTC through the enforcement process to stop those who unlawfully obtain and sell confidential customer information. Just as they worked together effectively in the past to promote the “do-not-call” registry, the Commission and the FTC should continue to cooperate on issues that cut across their jurisdictions. But any unilateral FCC action should allow carriers and their customers to develop company-specific solutions to protect customer records. Imposing a standard, one-size-fits-all mandate on carriers would be a mistake for several reasons: it might make it easier for wrongdoers to develop methods to gain fraudulent access to confidential data; it may unduly impede legitimate transactions between carriers and their customers; and it reduces the flexibility that carriers need to respond quickly to new methods used by data brokers to collect and use confidential information.

²⁸ *Id.* at 29-30.

II. THE COMMISSION SHOULD EXPRESSLY CONFIRM THAT STATE EFFORTS TO IMPOSE NON-ECONOMIC REGULATIONS ON TITLE I BROADBAND SERVICES AND FACILITIES ARE PREEMPTED

The Commission should explicitly preempt state regulation with respect to the non-economic regulations at issue in the *NPRM*. The Commission's federal deregulatory policy preempts contrary state rules even in the absence of express preemption. But because the states appear ready (and eager) to impose a host of regulations that risk undermining the federal policy of deregulating broadband services and facilities, the Commission should expressly confirm that state regulations in this area are preempted.

NARUC was very clear in its comments that, unless the FCC explicitly preempts all state regulation in a particular area, its members will treat federal standards only as a "useful baseline" which they are free to supplement with their own regulations in the name of "consumer relief."²⁹ Likewise, NASUCA urges the Commission not to preempt "states from addressing service quality issues" because "[s]tates should be able to establish and enforce the necessary consumer protections, including service quality standards."³⁰ But, as Verizon explained in its opening comments, any attempt by states to impose non-economic regulations on broadband services and facilities, after the Commission has decided that such regulations are unnecessary, would run directly counter to the Commission's considered policy determination favoring a deregulatory approach.³¹

²⁹ NARUC Comments at 8.

³⁰ NASUCA Comments at 45; *see also* New York DPS Comments at 2 ("States should not be limited to a role of merely enforcing federal rules, but instead should continue their longstanding practice of providing state-specific consumer protections to subscribers of communications services."); NJ Ratepayer Advocate Comments at 7 ("states are in the best position to protect consumers and therefore . . . states should be afforded substantial latitude in setting and enforcing consumer protection rules and regulations").

³¹ *See* Verizon Comments at 26.

Moreover, given the national scope of broadband services and networks,³² providers will face a patchwork of inconsistent state regulations that will inevitably burden deployment and retard investment.³³ Many providers of broadband services do not even operate on a state-by-state basis.³⁴ Given that the Commission has determined that the best way to further its broadband objectives is to relieve these broadband services and facilities from unnecessary regulation, it would significantly undermine this federal policy for the Commission to allow these same services and facilities to be subject to 51 different (and potentially mutually inconsistent) sets of regulations imposed at the state level.³⁵ The Commission should, therefore, continue its deregulatory approach with respect to the issues raised in this *NPRM* by expressly preempting state efforts to impose their own versions of these same regulations.

³² The Commission has repeatedly recognized that broadband Internet access services and facilities are interstate in nature. *See generally* Memorandum Opinion and Order, *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, 13 FCC Rcd 22466, ¶ 1 (1998) (concluding that Internet access is interstate); *Cable Modem Declaratory Ruling*, 17 FCC Rcd 4798, 4832, ¶ 59 & n.221 (concluding that cable modem services is properly classified as interstate because “an examination of the location of the points among which cable modem service communications travel” reveals that the points “are often in different states and countries”).

³³ *See* BellSouth Comments at 24 (“The ability of any carrier to maintain nation- or region-wide operations is severely hampered when the carrier must comply with multiple sets of rules governing the same area of business.”).

³⁴ *See, e.g.*, Cingular Comments at 18 (“States cannot be permitted to regulate Internet access, because state-by-state regulation will severely affect the integrated provision of Internet access across state lines.”); Comcast Comments at 17 (“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.”); USTelecom Comments at 7 (“To ensure that broadband providers are not forced to comply with potentially 50 different sets of consumer protection regulations, the Commission should pre-empt state regulation of broadband services.”).

³⁵ *See* Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Comm’n*, 19 FCC Rcd 22404, ¶ 35 (2004) (“[W]e cannot permit more than 50 different jurisdictions to impose traditional common carrier economic regulations . . . and still meet our responsibility to realize Congress’s objective.”).

CONCLUSION

For the reasons discussed above and in Verizon's opening comments, the Commission should avoid imposing new regulations on Title I broadband services and should confirm that state efforts to do so are preempted.

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