

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

In the Matters of

Appropriate Framework for Broadband  
Access to the Internet over Wireline  
Facilities

CC Docket No. 02-33

Universal Service Obligations of  
Broadband Providers

Review of Regulatory Requirements for  
Incumbent LEC Broadband  
Telecommunications Services

CC Docket No. 01-337

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

CC Dockets Nos. 95-20, 98-10

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

WC Docket No. 04-242

Consumer Protection in the Broadband Era

WC Docket No. 05-271

## **REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

The People of the State of California and the California Public Utilities Commission (“California” or “CPUC”) respectfully submit these reply comments in response to the Notice of Proposed Rulemaking (“NPRM”), released September 23, 2005, by the Federal Communications Commission (“FCC”) in the above-captioned proceedings. In its NPRM, the FCC seeks comment on whether various statutory and regulatory non-economic consumer protection measures generally governing telecommunications services should be extended to access services that connect consumers to the Internet via broadband facilities.

The California Public Utilities Commission finds the comments on the applicability of existing telecommunication rules to broadband services are sufficient for the FCC to make an informed decision. These comments do not speak to the issue of whether consumer protections rules developed for telecommunications services are appropriate for the broadband marketplace. California reserves the right to comment on this area in the future but declines to do so at this time.

However, California finds that there are two areas unique to the provision of broadband service in which rules will advance consumer protection. California’s premise is that consumer protection is advanced by consumer choice. We propose two areas of consumer protection where protections unique to broadband should be developed. They are: net neutrality and provision of stand alone DSL.

Any consumer protections implemented by the FCC for broadband access should include policies supporting net neutrality consistent with the statement of principles articulated by the Commission in its August 5, 2005 Policy Statement.<sup>1</sup> This policy statement outlines four principles to encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet: (1) consumers are entitled to access the lawful Internet content of their choice; (2) consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement; (3) consumers are entitled to connect their choice of legal devices that do not harm the network; and (4) consumers are entitled to competition among network providers, application and service providers, and content providers. California believes that in addition to encouraging broadband deployment and preserving and promoting the open and interconnected nature of the public Internet, these policies represent important consumer protections.<sup>2</sup>

Fundamentally, such policies promote consumer choice, choice that empowers consumers and provides fundamental consumer protection. California urges the FCC to consider rules implementing these principles as part of the FCC's consideration of consumer protection rules for the broadband marketplace.

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<sup>1</sup> FCC 05-151, August 5, 2005

<sup>2</sup> We note, as the FCC did that these principles are subject to reasonable network management. (See FCC-05-151)

California believes that consumer choice is an important consumer protection and promotes policies that ensure consumers are able to exercise choice among voice telecommunications service providers as competitive market forces lessen the need for traditional legacy regulation. Consumers and businesses are increasingly using a diversity of providers and technologies to meet their communications needs, including traditionally-regulated wireline common carriers as well as other providers and services such as wireless, cable telephony and Internet-based voice service providers (VoIP) . Requiring customers to pay for separate “plain old telephone service” as a condition of accessing high-speed Internet service may stifle competition and reduces consumer choice in the voice market by forcing customers to pay twice for voice service if they choose to utilize VoIP or wireless providers as an alternative to traditional voice service. Further, requiring customers to pay for separate plain old telephone service as a condition of accessing high-speed Internet service will also discourage the deployment and adoption of advanced services as called for under section 706 of the 1996 Telecommunications Act by making access to high-speed Internet service significantly more expensive for customers who do not wish to utilize analog voice service, thus inhibiting consumer choice.

The California Public Utilities Commission believes that customers’ access to competitors’ VoIP service over SBC’s DSL service is an important consumer protection and is crucial to protect consumer choice and maintain competitive pressure on

traditional telephone service as the industry consolidates, technology converges, and intermodal competition increases.

Ensuring access to advanced services, including competitive VoIP providers, over DSL broadband is also critical to promoting access to broadband and advance telecommunications services, lower prices, and broader consumer choice. California understands that by tying together DSL service with its voice services, whether traditional local exchange service or VoIP, an ILEC discourages consumers from using VoIP competitors and limits their choices.

It is the policy of the State of California to assure the continued affordability and widespread availability of high-quality telecommunications services to all Californians; to encourage the development and deployment of new technologies; to assist in bridging the "digital divide" by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians; to promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct; and to remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.<sup>3</sup>

The California Public Utilities Commission has a compelling statutory interest in fostering intermodal competition in the local voice telephony market, as well as fostering access to advanced telecommunications services, such as VoIP. To the extent an ILEC forces consumers to separately purchase its traditional local phone service in order to

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<sup>3</sup> California Public Utilities Code §709

obtain DSL service, such action frustrates intermodal competition and access to advanced services, and undermines the benefits to consumers that would occur as a result of this transaction.

On August 25, 2006 the Commission articulated a statement supporting the promotion of this policy of consumer choice in communications with all relevant agencies and policymakers at the Federal and State level. A copy of this Policy Statement is attached.<sup>4</sup>

The California Public Utilities Commission in approving the mergers of SBC and AT&T and the merger of Verizon and MCI required both SBC (now AT&T) and Verizon to cease and desist from forcing customers to separately purchase traditional local phone services as a condition of purchasing SBC's DSL service. This provision increases competition in the marketplace and empowers consumers by expanding their ability to choose among different services, technologies and providers.<sup>5</sup>

California urges the FCC to examine these two policies and net neutrality and stand-alone DSL as important consumer protections for the broadband marketplace. Such principles protect consumer ability to choose among network providers, application and service providers, and content providers. Such choice is a tangible protection for consumers in any marketplace and is particularly relevant for the broadband market.

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<sup>4</sup> See CPUC Policy Statement, August 25, 2006.

<sup>5</sup> D.05-11-028 page 42 (mimeo) and D.05-11-029, page 56 (mimeo).

Respectfully submitted,

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**ATTACHMENT**



# California Public Utilities Commission

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## Policy Statement

WHEREAS, Congress has supported national telecommunications policies that foster investment, advance services deployment, and technological innovation to promote robust competition in a progressively deregulated environment; and

WHEREAS, The Federal Communications Commission and State Commissions have worked collaboratively to carry out national policies to facilitate competition in the telecommunications industry while promoting universal access to reliable voice services, 911/E911 emergency services, high-speed Internet and advanced telecommunications services; and

WHEREAS, The State of California and the CPUC support policies that promote competition and ensure that consumers are able to exercise choice among voice telecommunications service providers as competitive market forces lessen the need for traditional legacy regulation; and

WHEREAS, The Federal Communications Commission in its Triennial Review Remand Order has sunset UNE-P as an entry mechanism for competition in the local exchange market; and

WHEREAS, Consumers and businesses are increasingly using a diversity of providers and technologies to meet their communications needs, including traditionally-regulated wireline common carriers as well as other providers and services such as wireless, cable telephony and Internet-based voice service providers (VoIP); and

WHEREAS, In light of consolidation in the telecommunications industry and the absence of UNE-P, customer access to VoIP over high-speed Internet is critical to competition in the voice communications market; and

WHEREAS, Requiring customers to pay for separate “plain old telephone service” as a condition of accessing high-speed Internet service may stifle competition in the voice market by forcing customers to pay twice for voice service if they wish to utilize VoIP or wireless providers as an alternative to traditional voice service; and

WHEREAS, Requiring customers to pay for separate plain old telephone service as a condition of accessing high-speed Internet service will also discourage the deployment and adoption of advanced services as called for under Section 706 of the 1996 Telecommunications Act by making access to high-speed Internet service significantly more expensive for customers who do not wish to utilize analog voice service; and

WHEREAS, Fostering deployment of and access to high-speed Internet service is a national and state policy goal and critical to competition in the voice communications market; and

WHEREAS, The FCC has adopted four principles to encourage broadband deployment and preserve and promote the open and interconnected nature of public Internet where consumers are entitled to: access the lawful Internet content of their choice, run applications and services of their choice, subject to the needs of law enforcement, connect their choice of legal devices that do not harm the network; competition among network providers, application and service providers, and content providers; therefore be it

RESOLVED, That the Commission authorize Staff and General Counsel to promote this policy of consumer choice in communications with all relevant agencies and policymakers at the Federal and State level; and be it further

RESOLVED, That nothing in this resolution is intended to advocate prohibiting the bundling of services over high-speed Internet facilities or requiring the low frequency portion of the loop to be unbundled or offered as a network element.

For more information on the PUC, please visit [www.cpuc.ca.gov](http://www.cpuc.ca.gov)

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