BROADBAND CONSUMER PROTECTION 05-271 TALKING POINTS

- The Commission should not rely solely on market forces to protect consumers.
- Despite industry assertions to the contrary, customers who migrate among broadband services and providers incur significant transaction costs, and, therefore, the presence of more than one broadband Internet access provider in a given market does not justify the absence of consumer safeguards.
- Consumer protection measures without adequate enforcement are meaningless.
- All broadband service consumers, regardless of the technology platform, should be afforded adequate consumer protection.
- The Commission should take steps to narrow the digital divide.
- In the absence of rate averaging, efforts to include all segments of society in the broadband era gain greater significance.
- Regardless of whether consumers rely on broadband or narrowband technology, consumer privacy safeguards are essential.
- The Commission should adopt policies regarding broadband slamming and continue to delegate enforcement to the states.
- Truth-in-billing requirements are essential for the broadband information access market to operate efficiently, and, furthermore, states should have the authority to establish additional rules as necessary.
- The Commission should move forward in requiring providers to provide notification of network outages to ensure reliable, ubiquitous service.
- Readily available information about industry participants' practices is essential to a well-functioning market place.
- Ample notification should be required of broadband providers who seek to discontinue service.
- Principles of non-discrimination are essential in the broadband Internet access market to ensure that networks remain open.
- The Commission should establish the "regulatory floor" but should also

encourage states to participate fully in the establishment and enforcement of consumer protection measures.

The following principles should guide the Commission's analysis of broadband and consumer protection:

- *Ensure and recognize states' role in consumer protection and broadband regulation*: There is concurrent jurisdiction over broadband. States are in the best position to protect consumers and therefore and states should be afforded substantial latitude in setting and enforcing consumer protection rules and regulations.
- *Ensure consumer protection in the face of rapid technological change:* Hard-fought-for consumer protection should not be sacrificed in the name of technological innovation and advancement.
- *Prevent undue price discrimination:* The two-tiered system that Verizon and other ILECs propose with premium prices for premium access to the Internet should be rejected.
- *Provide Lifeline support for broadband services:* The existing universal service program likely requires expansion to promote broadband deployment to all households. Absent such regulatory intervention, the United States may become a two-tiered society of disparate access to and use of broadband. The Ratepayer Advocate concurs with Chairman Martin's observation that "[b]roadband deployment is vitally important to our nation as new, advanced

services hold the promise of unprecedented business, educational, and healthcare opportunities for all Americans."[1] The Ratepayer Advocate also concurs with Commissioner Adelstein's comment that "[w]e have a lot more work to do to establish a coherent national broadband policy that signifies the level of commitment we need as a nation to speed the deployment of affordable broadband services to all Americans." [2]

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[1] / *NPRM,* Statement of Chairman Kevin J. Martin, at 123.

[2] / *NPRM,* Statement of Commissioner Jonathan S. Adelstein, at 131.

TALKING POINTS ON CABLE FRANCHISING

The Ratepayer Advocate urges the Commission to:

- The FCC lacks jurisdiction over the awarding of initial franchises under the Act.

- The Act prohibits an LFA from unreasonably refusing to award a franchise and the Act already has specific legal remedies that a cable operator can exercise to contest an unreasonable decision to award or renew a franchise by the LFA.

- Many of the concerns expressed in the NPRM are not directed at the decisions made by LFAs but by the process itself, a process that is mandated by the Act and which the FCC is not free to change or ignore.

- The LFAs are in the best position to evaluate the needs of their respective citizenry, and to evaluate the potential of each cable entrant to meet those needs. Moreover, local and State control can better ensure that cable operators who are awarded franchises have the requisite financial and technical capabilities to meet the needs of the cable customers.

- It is the refusal of new entrants to abide by the same terms as other cable operators, and not onerous restrictions, which has hindered the new entrants' ability to obtain franchises in some municipalities.

- The Ratepayer Advocate supports new legislation regarding statewide cable franchises provided that it:

  1) promotes adequate, economical and efficient cable television service to New Jersey consumers;

  2) encourages the optimum development of the educational and community service potentials of the cable television medium;

  3) provides just and reasonable rates and charges for cable television system services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices;

  4) promotes and encourage harmony between cable television companies and their subsidiaries and customers; and

  5) adequately protects the interests of municipalities of the state in regard to the award of franchises.

The entrance of traditional telephone companies into cable television markets, as well as entry of cable companies into telecommunications services raises questions that need to be addressed within the framework of what regulations are appropriate and necessary and how consumers are to be protected.

- The Ratepayer Advocate supports the establishment of new benchmarks for Basic Service Tier ("BST") rates and the need to adjust those benchmarks for unregulated services, such as information services, by imposing allocation requirements.

- The FCC should adopt rule changes that require cable operators to file Form 1235, even if the upgrade costs are only recovered through the CPST, and permit LFAs to review and approve such filings.

- The Ratepayer Advocate urges the FCC to considering permitting LFAs to review and regulate CPST rates or in the alternative, to re-impose CPST regulation by the FCC.

- The Ratepayer Advocate urges the FCC to take steps to have Congress revise Section 623 of the Act to eliminate the ability of cable operators to avoid rate regulation of the BST through the filing of effective competition petitions. The various tests for determining effective competition should be eliminated.

- In order to avoid cross subsidization, there needs to be uniform rules applied to traditional cable operators and to traditional telephone providers that seek to offer competing services. Structural separation is the best safeguard against cross-subsidization of services. The Ratepayer Advocate believes measures must be adopted that provide for true structural separation, when for example a non-traditional service provider, such as a telephone common carrier, enters the cable market or cable companies offer telephone service. Recommended structural separations would include but should not be limited to the:

  1) creation of a subsidiary company, which will operate independently as the service provider for cable television service, internet service, and/or telephone service;

  2) maintenance of separate records and accounting books, maintained pursuant to the Uniform System of Accounts; and

  3) maintenance of separate officers, directors and employees.

- Any sharing of any personnel, buildings, equipment, and networks, should be duly noted in the affiliates records and accounts.

- The FCC by rule should seek to impose the safeguards identified in Section 272 of the Act and apply them to cable operators and telephone companies that offer competing services. Any business conducted between the parent company and its cable affiliates, internet affiliates, and/or telephone affiliates must be on an "arm's length" basis, in writing and made available for public inspection.

- The Ratepayer Advocate recommends that all cable, internet, and telephone affiliates should be required to file Cost Allocation Manuals ("CAMs"), consistent with sections of 47 C.F.R. § 64.903 and Part 32 affiliate transaction rules. Moreover, these CAMs should address not only the allocation of costs among various services, e.g. cable, internet, and telephony, but they should also address the allocation of cable costs between the BST and CPS tiers.

- Appropriate allocation methods should also be developed and approved to ensure that costs related to network upgrades are appropriately allocated among the various services benefiting from the upgrade.

- Regularly mandated reviews of accounting books and records should be required to ensure that revenues and expenses from one entity are not being credited or charged to others, as such cross-subsidization would for all intent and purposes eliminate the benefits and frustrate effective competition.

- The Ratepayer Advocate also urges the FCC to end the separation freeze and re-initialize rate caps for all interstate services. With the substantial changes like 271 entry, classification of cable modem and DSL as information services, and the classification of VoIP as an interstate service, the federal rate caps based upon the frozen 75/25 split and distort rate caps do not ensure just and reasonable rates. The freeze also distorts state rate caps in that the state rate caps are over stated. The portion of cost associated with the local loop that is allocated to states should be substantially lower and most likely be in the range of 25% versus 75% that is assigned today. As a practical matter, this means that state rates are subsidizing interstate rates by keeping state rate caps artificially high. The FCC should not ignore this situation any longer and fulfill its public interest obligations by aligning cost allocations with its reclassification decisions on various services.

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TALKING POINTS ON NON-RURAL HIGH COST SUPPORT

CC Docket No. 96-45 & WC Docket No. 05-337

- **The Ratepayer Advocate urges the Commission to consider carefully the implications for consumers throughout the nation of any decisions that it renders in this proceeding.**

- **Any non-rural carrier that receives high cost support should be accountable to consumers and required to demonstrate how the high cost subsidy benefits consumers.**

- **Some variation among rates is inevitable, in part, because public utility commissions render state-specific determinations about the appropriate revenue requirement and price cap mechanisms for incumbent local exchange carriers ("ILEC"), which, in turn, contributes to differences in rate design and rate levels. Therefore, the Commission should not seek to eliminate all variation in its pursuit of "reasonable comparability."**

- **The Ratepayer Advocate urges the Commission to ensure that broadband is affordable for all consumers regardless of their geographic location and income.**

- **Consumers bear the burden of the high-cost fund, and, therefore, the Commission should ensure that any high cost fund mechanism is sufficient but not excessive.**

- **The existing non-rural high cost fund is ample.**

- **The Ratepayer Advocate urges the Commission to ensure that the high cost fund does not become an unwarranted and unending revenue windfall for ILECs.**

- **The cost of providing basic local exchange service should be considered within the larger context of many significant factors that offset the relatively higher costs of serving rural areas within non-rural carriers' territories, most of which Congress likely did not anticipate when it established its universal service mandates ten years ago.**

- **Key economic factors to consider include: the substantial stream of revenues that ILECs generate as a direct result of consumers' near-monopoly reliance on ILECs for a basic link to the public switched network (*e.g.*, revenues from switched access, toll, vertical features, bundled offerings, etc.); billions of dollars of synergies resulting from multiple major mergers in the**

telecommunications industry; ILECs' supra-competitive earnings from special access services; and the virtual absence of local competition.

- **Together these factors provide compelling evidence that the erosion of non-rural ILECs' implicit support has not occurred, and, therefore, the original rationale for explicit non-rural high cost support does not apply to today's telecommunications market.**

- **The Ratepayer Advocate urges the Commission to establish a near-term sunset date for the non-rural high cost fund.**

INTERCARRIER COMPENSATION TALKING POINTS

The Ratepayer Advocate urges the Commission to consider the following:

Among other things, the Commission should:

- Quantify and consider the impact of proposed changes on consumers, particularly those with low volumes, in rural areas, and/or with low incomes.
- Reject mandatory bill-and-keep systems.
- Reject any industry proposals that are based on a purported entitlement by carriers to an arbitrary revenue stream.
- Reject any arbitrary increases to the subscriber line charge.
- Implement a new cost-based intercarrier compensation regime over a multi-year, transitional period.
- Defer to states on intrastate access charges and local rates because states have intrastate ratemaking authority.

The Ratepayer Advocate supports NASUCA's principles, which NASUCA summarizes as follows:

- Principle 1: Any proposal for intercarrier compensation reform should recognize that originating, transiting and terminating telecommunications traffic imposes costs on originating, transporting and terminating carriers.
- Principle 2: Any proposal for intercarrier compensation reform should treat all telecommunications traffic in an equitable and non-discriminatory manner.
- Principle 3: Any proposal for intercarrier compensation reform should include verification of costs and consideration of earnings of carriers.
- Principle 4: Any proposal for intercarrier compensation reform should fairly allocate costs so that residential customers do not pay more than their fair share of the costs of the telecommunications network.
- Principle 5: Any proposal for intercarrier compensation reform should recognize the appropriate role of state government in establishing rates charged to end- user consumer in each state.

- Principle 6: Any proposal for intercarrier compensation reform should avoid increases in unavoidable monthly line charges for end-use consumers.

- Principle 7: Any proposal for intercarrier compensation reform should avoid the need for new interstate universal service funding of carriers. [2]

Talking Points

Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. §160 from Enforcement of Certain of the Commission's Cost Assignment Rules
WC Docket No. 05-342

- **None of the comments provide evidence to support BellSouth's attempt to railroad issues that would be addressed more appropriately in a rulemaking and/or by a Federal/State Joint Board.**

- **The Commission has previously determined that cost accounting rules continue to be necessary, even in the presence of price cap regulation, and BellSouth has failed to demonstrate that the Commission should revisit these findings.**

- **Cost accounting rules are essential to enable the Commission to assess the price cap regime that governs BellSouth's and other ILECs' interstate rates.**

- **Cost accounting rules are essential for the establishment of TELRIC rates, and are not relevant to financial accounting requirements.**

- **Cost accounting requirements are linked inextricably to the Commission's pending review of the regulation of BOCs after Section 272 affiliate requirements sunset.**

- **Contrary to Verizon's assertion, the Commission should not extend the jurisdictional separations freeze, but rather should act expeditiously to modify the separations factor.**

- **Contrary to Verizon's recommendation, the Commission should not interfere with states' authority to establish just and reasonable rates**

- **Competitive forces do not yet constrain BellSouth's market power.**

Talking Points

Qwest's Petition for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunsets
WC Docket No. 05-333

- **Qwest's Petition is flawed procedurally.**
- **The Commission should address the dominant/nondominant status for Bell operating companies through a general rulemaking proceeding rather than through case-specific forbearance proceedings.**
- **Regulatory oversight of BOCs' long distance services continues to be essential to protect consumers and to prevent anticompetitive behavior.**
- **Alternative technologies are augmenting, but not replacing, traditional telephony.**
- **BOCs' success in the long distance market combined with its dominance of the local market underscores the importance of regulatory oversight.**
- **BOCs remain dominant in many product markets.**
- **Dominant carrier regulation does not force a debilitating corporate structure on BOCs.**
- **Qwest's petition should be dismissed because Qwest is not specific about the regulations from which it seeks forbearance.**
- **Qwest's petition should be dismissed because Qwest has significant market power in the special access market, which it can use to unfair advantage.**
- **Qwest fails to show that dominant carrier regulation is unnecessary to protect consumers.**