

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of

Petitions of AT&T Inc., BellSouth Corporation, the Embarq Local Operating Companies, and Qwest Under 47 U.S.C. § 160(c) for Forbearance from Title II and *Computer Inquiry* Rules with Respect to Broadband Services

WC Docket Nos. 06-125 & 06-147

REPLY COMMENTS OF VERIZON

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August 31, 2006

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INTRODUCTION AND SUMMARY

On December 20, 2004, Verizon filed a petition for forbearance from the application of Title II and the *Computer Inquiry* rules to Verizon's broadband services, to the extent those requirements might be construed to apply to those services. When the statutory deadline for ruling on that petition passed without Commission action, the petition for forbearance was "deemed granted" by operation of law, thus terminating the proceedings on Verizon's petition.

Other incumbent local exchange carriers ("LECs") have now filed their own, separate petitions for forbearance, seeking for themselves and other incumbent LECs the same relief that was granted to Verizon by operation of law. Predictably, those opposing these new petitions make the same arguments here that have been repeatedly rejected by the Commission and by the courts — namely, that there supposedly is insufficient competition in the broadband market and that a grant of forbearance would harm end-user customers and intramodal competitors. But these are the same claims that these same commenters raised before the Commission held in the

¹ The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

*Triennial Review Order*² that incumbent LECs should not have to offer their packetized, broadband facilities as § 251(c)(3) unbundled network elements. And these same claims were repeated before the Commission held in the *271 Broadband Forbearance Order*³ that it would forbear from enforcing § 271 insofar as it requires Bell Operating Companies (“BOCs”) to provide other carriers unbundled access to their broadband facilities. The same claims were raised yet again before the Commission held in the *Title I Broadband Order*⁴ that wireline facilities-based providers may sell broadband transmission services under Title I, either on a private carriage basis as a wholesale input to a wireline broadband Internet access service, or as an information service when part of that provider’s own integrated wireline broadband Internet access service. And the Commission rejected similar claims in refusing to impose *Computer Inquiry* and Title II requirements on cable modem providers.⁵

In each of the orders, the Commission rejected these claims, and the courts, in the decisions reached to date, have affirmed the Commission in all respects. The most recent of

² Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*”), *aff’d in pertinent part, vacated in part and remanded, United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 543 U.S. 925 (2004).

³ Memorandum Opinion and Order, *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, 19 FCC Rcd 21496, ¶ 22 (2004) (“*271 Broadband Forbearance Order*”), *aff’d, EarthLink, Inc. v. FCC*, No. 05-1087, – F.3d –, 2006 WL 2346459 (D.C. Cir. Aug. 15, 2006).

⁴ Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005) (“*Title I Broadband Order*”), *petitions for review pending, Time Warner Telecom, Inc. v. FCC*, Nos. 05-4769 *et al.* (3d Cir. filed Oct. 26, 2005).

⁵ See Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, 17 FCC Rcd 4798 (2002) (“*Cable Modem Declaratory Ruling*”), *aff’d, National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

these decisions — *EarthLink* — could not have been stronger in upholding the Commission’s determinations that “the broadband market [i]s still emerging and developing,” and that the “preconditions for monopoly are not present” in that market, which is characterized by robust competition, with cable modem as the market leader — a conclusion that the D.C. Circuit had “upheld in resounding terms.” 2006 WL 2346459, at *6, *8-*9 (internal quotation marks omitted). The court also specifically upheld the Commission’s findings that “CLECs have alternat[iv]e ways to compete and the BOCs will be inclined to offer reasonable wholesale rates because they face intense intermodal competition,” and its “predictions about the development of new broadband technologies . . . [and, in turn, increased competition[] flowing from an absence of” regulation requiring BOCs to provide wholesale inputs to other carriers’ services. *Id.* at *8 n.8, *9 (internal quotation marks omitted). And the court held that, in light of § 706 and Congress’s policy of promoting broadband, the Commission properly “make[s] the forbearance decision with an eye to the future,” placing greater weight on “longer-term positive impact that *not* [regulating] would have on rates, consumers, and the public interest.” *Id.* at *5, *8.

The Commission’s deregulatory efforts, moreover, have resulted in increased competition, and the Commission’s actions have resulted in lower prices, higher-speed services, and a wider variety of offerings.⁶ In addition, all forms of broadband service — not only cable modem and DSL, but also third-generation wireless, fiber-to-the-premises, and broadband-over-powerline, among others — have increased subscribership and availability, as companies continue to invest heavily in these intermodal alternatives. This includes the “most rapid growth

⁶ See, e.g., News Release, Verizon, *Verizon Pumps Up Speed, Not Price, of FiOS Internet Service for New York, New Jersey and Connecticut* (May 1, 2006), available at <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=93410>; David W. Barden *et al.*, Bank of America, *Battle for the Bundle: Consumer Wireline Services Pricing* at 11 (Jan. 23, 2006).

of FTTH deployment to date,”⁷ 3G wireless networks being rolled out across the country,⁸ and massive investment in satellite broadband,⁹ among other investment and expansion.

In sum, the Commission’s deregulatory decisions have been right — both as a matter of law and regulatory policy — and the proponents of continued regulation have been wrong. Their arguments are no better this time around and provide no basis for the Commission to deviate from its steady path of deregulating incumbent LECs’ broadband facilities and establishing regulatory parity with other market participants, including the market leading cable modem providers.

DISCUSSION

I. VERIZON’S PETITION FOR FORBEARANCE WAS GRANTED BY OPERATION OF LAW, AND IS NO LONGER BEFORE THE COMMISSION

As an initial matter, claims by a few parties that the Commission should use this proceeding to reconsider or modify the relief that Verizon previously received are unavailing. Verizon’s petition was deemed granted by operation of law, and is no longer pending before the Commission. The Commission therefore has no authority to alter that relief in the current dockets and any claims to the contrary are specious.

⁷ Press Release, Fiber to the Home Council, *Fiber-to-the-Home Subscribers Increase 70% in the Last Third of 2005*, at 1 (Feb. 22, 2006), available at <http://www.ftthcouncil.org/documents/653395.doc>.

⁸ See, e.g., News Release, Helio LLC, *Helio is Here: Innovative 3G Services, Exclusive Devices and Personalized Service & Support* (May 2, 2006), available at http://www.helio.com/page?p=press_release_detail&contentid=1146535515494; Galen Gruman, *Taking IT to the Streets: 3G Arrives*, InfoWorld (Mar. 4, 2005), available at http://www.infoworld.com/article/05/03/04/10FEmobile_1.html?s=feature; Cingular HSDPA Release, *Cingular Launches 3G Network* (Dec. 6, 2005), available at <http://cingular.mediaroom.com/index.php?s=pageB&item=3>.

⁹ See, e.g., Sandy Brown, *DirecTV, EchoStar Bundle Up*, TheStreet.com (Jan. 30, 2006), available at <http://www.thestreet.com/tech/internet/10265051.html>; Bloomberg News, *DirecTV May Spend \$1 Billion for Web Foray* (Jan. 10, 2006).

First, EarthLink — alone among commenters — asserts that Verizon’s petition was not, in fact, deemed granted. *See* EarthLink at 3-6. The Commission, of course, issued a news release on March 20, 2006 correctly announcing that “the relief requested in Verizon’s petition was deemed granted by operation of law, effective March 19, 2006.”¹⁰ And more than a dozen parties — virtually all of which are also commenters here — have petitioned for review of the news release, because they, too, recognize that Verizon’s petition was deemed granted.¹¹

EarthLink’s argument to the contrary is based on a tortured reading of § 160(c), under which the deemed granted provision applies only if the Commission does *not* extend the one-year period for ruling on a forbearance petition. *See* EarthLink at 4. EarthLink claims that the “unless” clause in § 160(c) states an exception to the deemed granted provision:

Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by the Commission.¹²

Contrary to EarthLink’s claim, the “unless” clause does not modify “deemed granted,” which appears nearly 30 words earlier in the sentence, but the immediately preceding “within one year” clause. Thus, the plain meaning of this sentence is that a petition for forbearance is deemed granted if the Commission does not deny the petition within either one year or one year and 90 days, if the Commission extends the one-year period.

¹⁰ News Release, FCC, *Verizon Telephone Companies’ Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to Their Broadband Services Is Granted by Operation of Law* (Mar. 20, 2006), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-264436A1.pdf.

¹¹ Verizon notes that those petitions for review are jurisdictionally defective because, as the D.C. Circuit has held, courts of appeals do not have jurisdiction to review an announcement of an event that occurred by operation of law. *See AT&T Corp. v. FCC*, 369 F.3d 554 (D.C. Cir. 2004).

¹² 47 U.S.C. § 160(c).

Nor is it relevant, as EarthLink claims (at 5), that the deemed granted language is not repeated in the following sentence, which defines the Commission’s limited authority to extend the one-year period. The sentence that permits the Commission to extend the one-year period only by “an additional 90 days” — and only “if the Commission finds that an extension is necessary to meet the requirements of subsection (a)” — gives content to the “unless” clause in the preceding sentence. When the two sentences are read together, it is plain that the Commission’s extension authority is not an exception to the “deemed granted” provision. Indeed, EarthLink’s interpretation would nullify Congress’s decision to limit the Commission to a single, 90-day extension of the one-year period. That limit would have been unnecessary if, as EarthLink claims, the Commission could take as long as it wished to rule on a forbearance petition after extending the deadline, without ever triggering the deemed granted provision.

Second, Broadview *et al.* assert that Verizon’s petition — despite being deemed granted — “remains pending before the Commission” and that the Commission still “must issue an order on the Verizon Petition,” which they claim the Commission should do in these dockets, when it rules on the pending AT&T, BellSouth, Embarq, and Qwest petitions. Broadview *et al.* at 7, 9, 11. This argument, too, is based on a misreading of § 160(c). Contrary to their claims, nothing in § 160 permits — much less compels — the Commission to rule on a petition for forbearance after the statutory deadline passes.¹³

Broadview *et al.* appear (at 13) to rely on the final sentence of § 160(c), which states that the “Commission may grant or deny a petition in whole or in part and shall explain its decision in

¹³ Contrary to Broadview *et al.*’s claim (at 13-15), Verizon does not argue — as Core Communications, Inc. did — that the granting of a petition for forbearance by operation of law is legally equivalent to Congress passing a statute repealing the relevant provisions and regulations.

writing.”¹⁴ The statute thus uses permissive language to describe certain actions the Commission “may” take — affirmatively granting or denying a petition, in whole in part — in which case (but only in which case) it “shall” explain its decision in writing. Or the Commission “may” not take one of those actions, as when a petition is deemed granted, in which case there is no decision to explain. This provision, therefore, is irrelevant when a petition for forbearance is granted “by operation of law, not by Commission action.” *AT&T Corp.*, 369 F.3d at 556 (internal quotation marks omitted). When a petition is deemed granted, there is no Commission decision for the Commission to explain in writing. Instead, “Congress made the decision” to grant the petition “by operation of law,” and “[a]ny decision by the FCC” reference in § 160(c) “is a matter entirely separate from Congress’s decision” as reflected in the deemed granted provision. *Id.* at 560.

Not only does the Commission have no statutory obligation to issue a written order on Verizon’s deemed granted petition, but also it is precluded from doing so because that petition is not “pending” before the Commission. On the contrary, as the Commission and D.C. Circuit have held in the context of § 204(a)(3), a “deemed” grant of a petition is a “conclusive” grant.¹⁵ The Commission cannot belatedly issue an order under § 160 on Verizon’s petition, just as it cannot issue an order under § 204 with regard to a tariff that has been deemed lawful. *See Virgin Islands Tel. Corp. v. FCC*, 444 F.3d 666, 672-73 (D.C. Cir. 2006). Similarly, in *Tri-State Bancorporation, Inc. v. Board of Governors of the Federal Reserve System*, 524 F.2d 562 (7th Cir. 1975), the Seventh Circuit vacated an agency order purporting to deny an application for

¹⁴ CompTel (at 6) makes the same argument, though it does not claim that Verizon’s petition is still pending before the Commission.

¹⁵ Memorandum Opinion and Order, *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 12 FCC Rcd 2170, ¶¶ 18-19, 21 (1997); *see ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 412, 415 (D.C. Cir. 2002).

approval of formation of a bank holding company because that order was adopted and released after the application was “deemed granted” by operation of law. *See id.* at 564, 566-68. Like § 160(c), the “time limitation in the [Bank Holding Company] Act is mandatory in the sense that the statute prescribes the effect of the Fed’s failure to act, *i.e.*, the application is deemed approved.” *Id.* at 565-66. And the court recognized “Congress’s declaration[,] implicit in” adopting the “deemed granted” provision, that it should eliminate the “risk [of] allowing a meritorious application to be delayed by [the] federal bureaucracy for more than” a specified time, even though the result is to preclude the agency from belatedly determining that the application was not meritorious. *Id.* at 567-68; *see North Lawndale Econ. Dev. Corp. v. Board of Governors of the Fed. Reserve Sys.*, 553 F.2d 23, 27 (7th Cir. 1977) (vacating another order purporting to deny an application when the order was adopted and released after the application was deemed granted).

Third, for similar reasons, the Commission must reject other commenters’ proposals that the Commission rescind the deemed grant of forbearance or reduce (whether through clarification or modification) the relief that Verizon obtained when it rules on the AT&T, BellSouth, Embarq, and Qwest petitions pending in this docket. *See Alpheus et al.* at 2-3, 8-9; OPASTCO at 3-7. Because Verizon’s petition was deemed granted, the Commission no longer has jurisdiction over that petition. *See, e.g., Tri-State*, 524 F.2d at 565-68. Therefore, whatever the scope of the relief the Commission grants to the current petitioners, it cannot simply issue an order that reduces the relief that Verizon obtained by operation of law.¹⁶ In any event, Verizon

¹⁶ Matters are different, however, if the Commission grants relief beyond that already received by Verizon, because some of the petitions request relief applicable to *all* BOCs or *all* incumbent LECs. In that case, Verizon (as a BOC and an incumbent LEC) would obtain any additional benefits that might accrue as a result of the Commission’s order in these dockets.

notes that OPASTCO identifies no basis for its purported confusion about which broadband services were the subject of Verizon's petition and whether Verizon was relieved of any obligations to make universal service contributions for those services. In fact, Verizon explicitly listed the services that were the subject of its petition,¹⁷ and affirmatively stated that it did not seek forbearance from federal universal service obligations applicable to those services.¹⁸ There can be no *bona fide* confusion on either point.¹⁹

II. THE PETITIONS SHOULD BE GRANTED BECAUSE THE NATIONWIDE BROADBAND MARKET IS ROBUSTLY COMPETITIVE

A. Robust Competition in the Nationwide Broadband Market Demonstrates that the Criteria for Forbearance Are Satisfied

Congress required the Commission to grant a petition for forbearance when continued enforcement of the statutory provisions and regulations at issue is neither "necessary to ensure" "just and reasonable" rates nor "necessary for the protection of consumers," and forbearance from enforcing that requirement "is consistent with the public interest," including the interest in "promot[ing] competitive market conditions." 47 U.S.C. § 160(a)-(b). The Commission has long recognized that "competition is the most effective means of ensuring that . . . charges,

¹⁷ Letter from Edward Shakin, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-440, Att. 1 (FCC filed Feb. 7, 2006).

¹⁸ Letter from Suzanne A. Guyer, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-440, at 1 (FCC filed Feb. 17, 2006).

¹⁹ CompTel (at 5 n.16) asserts that it is unclear whether Verizon claims that the relief granted by operation of law applies to services other than those listed in the February 7, 2006 ex parte, *see supra* note 17, but it relies on an analyst's mischaracterization of a statement by a Verizon executive, which was immediately corrected in a subsequent report. In any event, contrary to CompTel's implication, the initial report of the executive's statement did not mention any services in the context of "the recent FCC forbearance petition" that were not clearly listed in the February 7, 2006 ex parte, Qaisar Hasan & May Tang, Buckingham Research Group, *Telecom Carriers Upbeat on Non-Consumer Trends* at 2 (July 6, 2006), and the correction made clear that Verizon intended to "cut prices . . . (as opposed to raising them)," as initially (and erroneously) reported, Qaisar Hasan & May Tang, Buckingham Research Group, *Industry Consultants Reinforce Bullish Thesis on Metro, Long Haul* at 2 (July 19, 2006).

practices, classifications, and regulations [for telecommunications services] are just and reasonable, and not unjustly or unreasonably discriminatory.”²⁰ Competition is also relevant to — if not dispositive of — the other two forbearance criteria. That is because § 160 reflects the basic antitrust principle that government regulation of the marketplace is “for the protection of competition, not competitors.” *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (internal quotation marks omitted). Thus, § 160(a)(3) and (b) require the consideration of the public interest, defined in terms of the promotion of competition, and § 160(a)(2) requires the Commission to consider the protection of “consumers” — that is, end-user customers — rather than the parochial interests of carriers that are both customers and competitors in serving consumers. For these reasons, as the Commission has recognized, any effect that forbearance might have on wholesale terms to other carriers is relevant to the analysis under § 160 only to the extent that it affects retail competition and consumers.²¹

In addition, the Commission’s analysis of the pending petitions must be guided by Congress’s direction to the Commission to “utiliz[e] . . . regulatory forbearance” to “promote competition,” “remove barriers to infrastructure investment,” and otherwise promote the growth and development of “advanced telecommunications capability.” Telecommunications Act of 1996, § 706(a) (codified at 47 U.S.C. § 157 note). The Commission has accordingly held that “broadband deployment is a critical policy objective that is necessary to ensure that consumers

²⁰ Memorandum Opinion and Order, *Petition of U S West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 16252, ¶ 31 (1999); *accord* 271 *Broadband Forbearance Order* ¶ 24.

²¹ See Report and Order in CC Docket No. 98-137 Memorandum Opinion and Order in ASD 98-91, *1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, 15 FCC Rcd 242, ¶ 63 (1999); Memorandum Opinion and Order, *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 18025, ¶¶ 67-69 (1998).

are able to fully reap the benefits of the information age”²² and that “widespread deployment of broadband infrastructure has become the central communications policy objective of the day.”²³

The Commission properly recognized that § 706 must influence its forbearance analysis in granting forbearance from enforcing § 271 insofar as it requires BOCs to provide other carriers unbundled access to their broadband facilities.²⁴ The D.C. Circuit expressly upheld the Commission’s decision, holding that the “language of section 706 suggests a forward-looking approach” and that the Commission “permissibly construed the statutory scheme to permit weighing [§ 706] considerations” in its forbearance analysis. *EarthLink*, 2006 WL 2346459, at *5-*6.

As Verizon has demonstrated,²⁵ stand-alone broadband transmission services, such as those at issue in the pending petitions, are sold primarily to enterprise customers and are subject to intense competition.²⁶ Incumbent LECs, moreover, have never had market power with respect to these services. The Commission, in its orders approving the combinations of Verizon and

²² *Triennial Review Order* ¶ 241.

²³ Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 FCC Rcd 3019, ¶ 1 (2002) (footnote omitted).

²⁴ *See 271 Broadband Forbearance Order* ¶¶ 20, 34.

²⁵ Prior to the deemed grant of Verizon’s forbearance petition, Verizon had filed for reconsideration of the Commission’s failure in the *Title I Broadband Order* to extend the relief granted in that order to broadband transmission service that will not be used as part of an Internet access service. Verizon attaches those filings, which set forth the record evidence in support of that reconsideration request, to this pleading. *See* Petition for Limited Reconsideration of *Title I Broadband Order*, CC Docket Nos. 02-33 *et al.* (FCC filed Nov. 16, 2005) (Attach. 1); Reply Comments in Support of Verizon’s Petition for Limited Reconsideration of the *Title I Broadband Order*, CC Docket Nos. 02-33 *et al.* (FCC filed Jan. 9, 2006) (Attach. 2).

²⁶ *See* Memorandum Opinion and Order, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, ¶ 57 (2005) (“*Verizon-MCI Order*”); *id.* ¶ 60 (“larger businesses often contract for more sophisticated services, including Frame Relay [and] virtual private networks”); *Triennial Review Order* ¶¶ 46, 129.

MCI, and SBC and AT&T, has expressly recognized this. Indeed, the Commission found, rejecting commenters' "contrary . . . assertions," that "competition in the enterprise market is *robust*." *SBC-AT&T Order*²⁷ ¶ 73 n.223 (emphasis added). The Commission held further that "myriad providers are prepared to make competitive offers" to enterprise customers and that "these multiple competitors ensure that there is sufficient competition." *Verizon-MCI Order* ¶ 74; *accord SBC-AT&T Order* ¶ 73. In reaching this conclusion, the Commission made specific reference to Frame Relay services, one of the wireline broadband transmission services at issue in these petitions. *See Verizon-MCI Order* ¶ 74. The Commission recognized further that "new competitors" — including "systems integrators and managed network providers" and those offering "IP-VPNs and other converged services" — "are putting *significant competitive pressure* on traditional service providers" with respect to enterprise customers. *See id.* ¶ 75 n.229 (emphasis added).

Competing providers of broadband services to enterprise customers include "interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors." *Id.* ¶¶ 64, 74. Verizon is most aware of competitive conditions in its own region, where AT&T is the leading provider for many (if not all) of the services at issue here,²⁸ but is only one of many competitive providers of these services, which

²⁷ Memorandum Opinion and Order, *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290 (2005) ("*SBC-AT&T Order*").

²⁸ *See, e.g.,* David W. Barden *et al.*, Banc of America Securities, *Merger Monitor XI*, at 3 (Oct. 3, 2005); *see also* AT&T, *IP and IP VPN*, available at http://www.business.att.com/service_portfolio.jsp?repoid=ProductCategory&repoitem=eb_vpn&serv_port=eb_vpn&segment=ent_biz ("AT&T VPN gives you choices in your network design of sophisticated VPN technologies, access, security, voice and WiFi offers, with the flexibility to add on options such as Voice over IP, Video, remote access and hosting.").

also include petitioner Qwest²⁹ and Sprint,³⁰ the former parent of petitioner Embarq. Other competitive providers include, but are not limited to, BT Infonet,³¹ Cavalier,³² Cogent,³³ Conversent,³⁴ Equant,³⁵ Global Crossing,³⁶ ICG,³⁷ Level 3,³⁸ Looking Glass,³⁹ McLeodUSA,⁴⁰

²⁹ See Qwest, *ATM Service*, available at http://www.qwest.com/pcat/large_business/product/1,1016,767_4_2,00.html (“Qwest ATM provides high speed, reliability and security for data, video, voice and Internet communications to keep you positioned in the global marketplace.”).

³⁰ See Sprint, *Data Networking Services: ATM*, available at <http://www.sprintbiz.com/products/atm/index.html> (“Sprint ATM works for sophisticated service providers and enterprises needing high speed transport (higher than DS3) to consolidate intracompany voice, data, and video traffic, while maintaining the highest level of network performance.”); Sprint, *IP VPN*, available at http://www.sprint.com/business/products/products/hardwareBasedIP-VPN_tabA.html (“Sprint IP Virtual Private Network(SM) (VPN) services deliver a best-of-both-worlds approach to connectivity, delivering the flexibility and global reach of the public Internet and the security and performance of a private networking solution.”).

³¹ See BT Infonet, *IP VPN*, available at http://www.bt.infonet.com/services/internet/ip_vpn.asp (BT Infonet’s “IP VPNs are run over our global IP network for fully meshed, any-to-any connectivity between multiple locations for a lower cost of ownership than a private network.”).

³² See Cavalier Telephone, *Data Solutions from Cavalier Business Communications*, available at http://www.cavtel.com/business/data_solutions.shtml (Cavalier offers frame relay with “Secure site-to-site connectivity with ‘best effort’ performance for delay tolerant traffic.”).

³³ See Cogent Communications, *Ethernet Point-to-Point Services*, available at <http://www.cogentco.com/htdocs/ethernet.php> (“Cogent’s point-to-point GigE connections are popular solutions for NetCentric customers who need room to grow. Implement a redundant or backup network or access remote storage locations – Cogent’s network has the capacity you need.”).

³⁴ See Conversent, *Conversent Secure Private Networks (ATM)*, available at <http://www.conversent.com/website/products/index.asp?prodId=24&pId=14&type=data> (Conversent’s “Secure Private Network Solutions leverages proven ATM technology to provide a perfect solution for businesses looking to transmit mission critical information between remote offices and a host location without fear of interception, loss, or corruption of data.”).

³⁵ See Equant, *Equant IP VPN*, available at http://www.equant.com/content/xml/prod_serv_ipvpn.xml (“Equant IP VPN is a fully managed, business-class service designed to provide a flexible, reliable and cost-effective network infrastructure. It’s backed by the highest levels of performance, quality, data integrity and security – all of which are essential to your e-business.”).

³⁶ See Global Crossing, *IP VPN Service*, available at http://www.globalcrossing.com/xml/services/serv_data_ipvpn_over.xml (“Global Crossing provides one of the most powerful

OnFiber,⁴¹ SAVVIS,⁴² TelCove,⁴³ Time Warner Telecom,⁴⁴ XO,⁴⁵ and Xspedius.⁴⁶ In short, the sophisticated business customers who purchase these types of services have many competitive options.

and versatile fully managed IP VPN solutions available today.”); Global Crossing, *Frame Relay Service*, available at http://www.globalcrossing.com/xml/services/serv_data_frame_rel_over.xml (Global Crossing offers “one of the world’s most extensive FR/ATM networks [which] allows you to link sites around the globe free from interoperability concerns.”).

³⁷ See ICG Communications, *Metro Ethernet*, available at <http://www.icgcomm.com/products/corporate/metroe.asp> (“ICG’s Metro Ethernet is a flexible transport service that provides connectivity across the local metropolitan geography using Ethernet as the core protocol” and is offered at up to “1Gbps (1000Mbps) – Gig-E.”).

³⁸ See Level (3) Communications, *Level 3 IP VPN*, available at <http://www.level3.com/3248.html> (Level 3’s “IP VPN service gives . . . the flexible connectivity and scalability of IP-based services combined with the security, privacy and quality of ATM and frame relay”); Level (3) Communications, *Level 3 Ethernet VPN Service*, available at <http://www.level3.com/1505.html> (Level 3’s “Ethernet VPN service is an MPLS-based, nationally available solution available in increments as small as 1 Mbps” and in “speeds [up to] 1 Gbps”).

³⁹ See Looking Glass Networks, *EtherGLASS – Ethernet Services*, available at <http://www.lglass.net/products/etherglass.jsp> (“Gigabit Ethernet services are available on either 1000Base-SX (multimode fiber), or 1000Base-LX (single mode fiber) interfaces, at transmission speeds that are configurable from 10 Mbps to 1000 Mbps, depending on your requirements.”).

⁴⁰ See McLeodUSA, *Preferred Advantage Metro Frame Relay*, available at http://www.mcleodusa.com/ProductDetail.do?com.mcleodusa.req.PRODUCT_ID=340910 (“McLeodUSA Preferred Advantage[] Metro Frame Relay links multiple office locations through an advanced, secure frame relay network, which works within either public or shared wide area networks.”).

⁴¹ See OnFiber Communications, *Ethernet*, available at <http://www.onfiber.com/content/index.cfm?fuseaction=showContent&contentID=22&navID=22> (“OnFiber Ethernet service provides the ease of Ethernet local area network technology extended across the metro or across the country. It offers a simple, cost-effective, and non-oversubscribed solution for interconnecting locations. With standard LAN interfaces, this service provide customers a highly affordable way to link sites together at speeds ranging from 1 Mbps to 1 Gbps.”).

⁴² See SAVVIS, *Network Services*, available at <http://www.savvis.net/corp/Products+Services/Network/> (“SAVVIS operates an integrated global IP and transport network that delivers IP VPN . . . solutions for enterprises and carriers alike.”).

⁴³ See TelCove, *ATM*, available at <http://www.telcove.com/products/atm.asp> (TelCove’s “ATM and Frame Relay services are able to inter-work to create a hybrid (Frame-ATM) network that best meets a customer’s network application requirements.”); TelCove, *IP VPN*, available at <http://www.telcove.com/products/ip-vpn.asp> (“With TelCove’s IP-VPN offerings, critical voice

Indeed, in granting Verizon a waiver to enable Verizon to obtain pricing flexibility for its advanced services, the Commission recognized that “competitors do not have to rely on Verizon’s packet switching to provide their own advanced services to customers.”⁴⁷ That is because carriers can provide (and are providing) wireline broadband transmission services by deploying their own facilities, or using third-party facilities, to serve the highly lucrative enterprise customers. In addition, carriers can — and already are — creating and selling their own broadband transmission services by combining “special access facilities” with *their own* “packet switch[es].”⁴⁸ Those TDM-based special access facilities, moreover, are beyond the scope of the pending petitions and, therefore, will remain available through federal tariffs, subject to common carrier regulation, even after the Commission grants the relief sought here.⁴⁹

and IT services can be converged using one of the industry’s most scalable, reliable, and efficient private communications networks.”); TelCove, *Metro Ethernet and Intercity Ethernet Service*, available at <http://www.telcove.com/products/ethernet.asp> (TelCove offers Ethernet services with “[b]andwidth from 10 Mbps to 10 Gbps for Metro Ethernet.”).

⁴⁴ See Time Warner Telecom, *Ethernet Internet Service*, available at http://www.twtelecom.com/cust_solutions/services/ethernet_internet.html (Time Warner Telecom offers Gigabit Ethernet, including “[f]ractional, full, or burstable solutions from 20 Mbps – 1000 Mbps (1 Gbps).”).

⁴⁵ See XO Communications, *XO VPN*, available at <http://www.xo.com/products/smallgrowing/data/vpn/index.html> (“XO[] VPN (Virtual Private Network) is a secure encrypted network solution that secures data traffic via encryption between your remote employees and your corporate network or among your various office locations. XO VPN is a cost-efficient solution for companies without a heavy investment in infrastructure or personnel.”).

⁴⁶ See Xspedius Communications, *Customer Solutions: Frame ConneX*, available at http://www.xspedius.com/customersolutions/data_connex.aspx (“Xspedius Communications, Inc. provides managed and unmanaged Frame Relay transport services in over 30 U.S. markets, utilizing its own MPLS backbone with ATM and Frame at the edge.”).

⁴⁷ Memorandum Opinion and Order, *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services*, 20 FCC Rcd 16840, ¶ 11 (2005).

⁴⁸ *Id.*

⁴⁹ Those TDM-based facilities also remain available as UNEs, to the extent the Commission has found impairment with respect to those facilities.

And there can be no serious claim that other carriers are unable to deploy their own packet switches or connect those switches to special access facilities, given the Commission's long-standing determination that carriers are not impaired without access to incumbents' packet switches and the fact that carriers have already deployed many thousands of such switches.⁵⁰

Similarly, with respect to non-TDM optical transmission services, there can be no serious dispute that other carriers are capable of deploying their own facilities. As the Commission has recognized, there is "substantial deployment of competitive fiber loops at OCn capacity and competitive carriers confirm they are often able to economically deploy these facilities to the large enterprise customers that use them."⁵¹ Competing carriers are able to deploy new OCn-level facilities without significant difficulty, because these types of facilities "produce revenue levels which can justify the high cost of loop construction, providing the opportunity for competitive LECs to offset the fixed and sunk costs associated with the loop construction." *Triennial Review Order* ¶ 316.⁵² Moreover, the "[l]arge enterprise customers purchasing services over OCn loops enter into long-term contracts committing to revenue streams and associated early termination charges that provide the ability for carriers to recover their substantial non-recurring 'set-up' or construction costs." *Triennial Review Order* ¶ 316 (footnote omitted). Consistent with these findings, "there does not appear to be any evidence of

⁵⁰ See, e.g., Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, ¶¶ 205-209 (2005) ("*Triennial Review Remand Order*"), *petitions for review denied, Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006); *271 Broadband Forbearance Order* ¶¶ 12, 19, 37 (forbearing from enforcing any requirement of BOCs to provide access to packet switches under § 271).

⁵¹ *Triennial Review Remand Order* ¶ 183; see also *Triennial Review Order* ¶ 315.

⁵² See also *Triennial Review Remand Order* ¶ 182 n.493 ("Despite these costs, the revenue possibilities of dark fiber are great enough to make self-deployment economic.").

demand for incumbent LEC OCn level unbundled loops,” which further shows that competing carriers are deploying these high-speed optical facilities themselves or obtaining them from third parties. *Id.* ¶ 315.

In addition, the enterprise customers that purchase these wireline broadband transmission services, as the Commission has recognized, are “highly sophisticated” and can “negotiate for significant discounts.” *Verizon-MCI Order* ¶ 75. This level of sophistication is “significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because they show that these users are likely to make informed choices based on expert advice” to “seek out best-price alternatives.” *Id.* ¶ 76. This “process of competitive bidding and contract renegotiation is often sufficient . . . [to] compel[] the supplier to offer lower prices and improved service to retain the [enterprise] customer.” *SBC-AT&T Order* ¶ 74 n.226 (internal quotation marks omitted). Indeed, as the Commission has recognized, contracts with enterprise customers “are typically the result of RFPs,” “are individually-negotiated,” and “are generally for customized service packages”⁵³ — the antithesis of common carrier offerings.

B. The Oppositions to the Petition Repeat Arguments that the Commission and Courts Have Repeatedly Rejected

In opposing the AT&T, BellSouth, Embarq, and Qwest petitions for forbearance, commenters rely on the same hoary arguments that the Commission and the courts have rejected time and again. The Commission should reject those arguments yet again in granting the petitions.

For example, Broadview *et al.* (at 18-28) contend that the Commission’s forbearance analysis must consider discrete geographic areas and discrete products, rather than the national

⁵³ *Verizon-MCI Order* ¶ 79.

broadband market that the Commission has considered in the *Cable Modem Declaratory Ruling*, the *Triennial Review Order*, the *271 Broadband Forbearance Order*, and the *Title I Broadband Order*. As this list makes clear, the Commission has already considered and rejected claims that it is precluded from recognizing that there is a national broadband market, and that the various high-speed, packetized services offered to customers in that market need not be considered on a service-by-service basis in the Commission's deregulatory efforts. The D.C. Circuit also "disagree[d]" with the argument that § 160 "permits the [Commission] to grant forbearance only after . . . [consideration of] particular geographic markets and . . . specific telecommunications services." *EarthLink*, 2006 WL 2346459, at *5 (internal quotation marks omitted). The court found that § 160 permits the Commission "to forbear on a nationwide basis — without considering more localized regions individually —" and "does not require consideration of specific services." *Id.*

Similarly, *Alpheus et al.* (at 5-6) argue that the Commission must utilize "traditional market power analys[i]s" in reviewing the pending forbearance petitions. But the Commission has already rejected that claim, and the D.C. Circuit expressly upheld the Commission's decision that its "traditional market power analysis . . . does not bind [the FCC's § 160] forbearance analysis." *EarthLink*, 2006 WL 2346459, at *7 (internal quotation marks omitted; alteration in original). The court found further that the Commission had acted appropriately in "eschew[ing] a more elaborate snapshot of the current market" conditions and in "tailoring the forbearance inquiry to the situation at hand," namely the "emerging and developing" broadband market. *Id.* at *6. The court also rejected claims that the Commission's analysis was inconsistent with precedent, finding that other instances in which the Commission had used its traditional market power analysis were "not directly applicable to the present circumstances." *Id.* at *7. *Alpheus et*

al. (at 6) attempt to distinguish *EarthLink* because that case pertained only to § 271 requirements, but in arguing that a different analysis is required here they rely on the same case that the D.C. Circuit expressly found is not “directly applicable” because it spoke to “dominance classifications,” which the pending petitions do not address. *EarthLink*, 2006 WL 2346459, at *7.

The New Jersey Division of Rate Counsel (“NJDRRC”) (at 6-7) repeats what the D.C. Circuit derided as the “frantic claim” that granting the pending petitions would mean that the Commission had found “that duopoly now equates to rigorous competition.” *EarthLink*, 2006 WL 2346459, at *8 (internal quotation marks omitted). As the court explained, this claim “misses the mark” because the question is not whether “cable’s majority market share alone is dispositive,” but instead whether — as the Commission found in the *271 Broadband Forbearance Order* and the *Title I Broadband Order* — that cable modem’s “market lead[]” “lends support” to a decision not to impose on “secondary market” players (incumbent LECs) obligations that do not apply to the “cable internet providers.” *Id.* NJDRRC’s claim is even further off base here, where the Commission has repeatedly, and correctly, found that enterprise customers have myriad providers from which to choose.

NJDRRC (at 8) also asserts that, if the Commission grants the pending petitions, it should extend to BOCs the structural separation requirements in 47 C.F.R. § 64.1903 that apply to independent incumbent LECs when they provide in-region, interstate, interexchange services. As NJDRRC implicitly recognizes, the statutory separation requirements applicable to BOCs will sunset in full by the end of this year, and have already sunset in full for Verizon and BellSouth.⁵⁴

⁵⁴ See Home Page, FCC Common Carrier Bureau, *RBOC Applications to Provide In-Region, InterLATA Services Under § 271*, available at http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/.

There is no basis for the Commission to re-impose such regulation, particularly because the technology used to provide the broadband services at issue here, as the Commission has recognized, is “fundamentally changing” in ways that are “ero[ding] . . . barriers between various networks” that underlay the differential regulation of intra- and interexchange services and that have no applicability to the any-distance broadband market.

Finally, a number of commenters repeat the claim — also rejected by the Commission in the *271 Broadband Forbearance Order* and the *Title I Broadband Order* and upheld by the D.C. Circuit in *EarthLink* — that the Commission must consider wholesalers interests separate from those of end-user customers. *See, e.g.*, *EarthLink* at 11-15; *CompTel* at 18, 20; *Sprint Nextel* at 13-14; *Time Warner Telecom et al.* at 7-16. In rejecting this claim in the past, the Commission has correctly started from the principle that it is *consumers*, not wholesalers, who are the ultimate beneficiaries of the Communications Act, and thus that *retail* competition in the broadband market — not the ability of particular companies to have guaranteed wholesale suppliers — is the central aim of regulatory policy. *See, e.g.*, *Title I Broadband Order* ¶ 62. And, in *EarthLink*, the court rejected claims that the Commission “failed to properly consider the wholesale market,” finding that the Commission had properly found that wholesale purchasers “have alternat[iv]e ways to compete” and that incumbents “will be inclined to offer reasonable wholesale rates” as a sensible business response to the intense competition in the market and the desire to “keep traffic on-net.” *EarthLink*, 2006 WL 2346459, at *8 n.8 (internal quotation marks omitted).⁵⁵

⁵⁵ It is telling that, in their efforts to support their claims that incumbents will discriminate against wholesale purchasers, commenters are forced to dredge up stale allegations from 2002. *See Alpheus et al.* at 26 & n.72.

CONCLUSION

For the foregoing reasons, the Commission should grant the relief requested in the petitions.

Respectfully submitted,

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August 31, 2006

ATTACHMENT 1

**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)	
)	
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 Docket Nos. 95-20, 98-10
)	
)	

**PETITION FOR LIMITED RECONSIDERATION OF
TITLE I BROADBAND ORDER**

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**Before the
Federal Communications Commission
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In the Matters of:)	
)	
Appropriate Framework for Broadband)	CC Docket No. 02-33
Access to the Internet over Wireline Facilities)	
)	
Universal Service Obligations of Broadband)	
Providers)	
)	
Computer III Further Remand Proceedings:)	CC Docket Nos. 95-20, 98-10
Bell Operating Company Provision of)	
Enhanced Services; 1998 Biennial Regulatory)	
Review – Review of Computer III and ONA)	
Safeguards and Requirements)	
)	

**PETITION FOR LIMITED RECONSIDERATION OF
TITLE I BROADBAND ORDER**

I. Introduction and Summary.

In its recent *Title I Broadband Order*,¹ the Commission took an important pro-competitive and pro-consumer step by recognizing that wireline facilities-based providers may sell broadband Internet access services as information services under Title I of the Communications Act, and that the underlying broadband transmission services, when offered by local telephone companies, are no longer subject to the common carrier strictures of Title II or to the *Computer Inquiry* rules unless the provider so chooses. Accordingly, telephone companies are now able to provide stand-alone broadband transmission services that are used as inputs to Internet access services through commercially negotiated private carriage agreements under Title I of the Act. As the Commission stated, “the appropriate framework for wireline Internet access

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005) (“*Title I Broadband Order*”).

service, including its transmission component, is one that is eligible for a lighter regulatory touch.” *Title I Broadband Order* ¶ 3. Verizon² fully supports this outcome that will allow it to compete more effectively with other broadband Internet access providers, like the cable companies, who have long operated outside of Title II.

At the same time, Verizon urges the Commission to reconsider one important aspect of its recent order – its decision not to extend Title I private carriage treatment to stand-alone broadband transmission services, such as the ATM and Frame Relay services that Verizon sells primarily to large enterprise customers, to the extent that those services are not used for Internet access.³ The question is whether the lighter regulatory treatment extended by the order to broadband transmission services when used for Internet access should also apply when those same services are not offered as part of an Internet access service.

Verizon documented in this proceeding that these broadband transmission services, whether or not offered together with Internet access, are sold in a competitive environment, thus eliminating any need for common carrier regulation of any providers. Verizon also showed that it and other local telephone companies remain subject to intrusive common carrier regulation when they sell these competitive broadband transmission services, even while all other

² The Verizon companies (“Verizon”) are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

³ In addition to any broadband transmission services used to access the Internet, the broadband transmission services entitled to Title I treatment should include all transmission services that use a packet-switched or successor technology. Examples include Digital Subscriber Line (DSL) services (while most DSL services are offered as part of an Internet access service, that is not always the case), Frame Relay services, Asynchronous Transfer Mode (ATM) services, gigabit Ethernet services, and optical services. This definition does not include TDM-based special access services, although, as the Commission has recognized, packetized transmission services should not be denied relief simply because of any “TDM handoff” required in order for these services to be compatible with legacy customer premises equipment. *See Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 20293, ¶ 21 (2004).

competitors have been immune from such regulation. For example, when other carriers provide these broadband transmission services to enterprise customers for purposes other than Internet access, they have been allowed to operate largely free from regulation even if they are nominally subject to Title II. By regulating local telephone companies as common carriers, but leaving their competitors essentially unregulated, the current regulatory scheme has made it more difficult for these providers to compete successfully and efficiently and has created disincentives to new investment that hinder deployment of new facilities and services.

Consistent with the record in this proceeding and with the Commission's precedent recognizing that Title I treatment is appropriate for services such as those at issue here over which the providers lack market power, the Commission should reconsider its order in this one regard and hold that all broadband transmission services, including specifically stand-alone broadband transmission services, are subject only to minimal regulation under Title I rather than the unnecessary strictures of Title II common carrier regulation, even when those services are not used for Internet access. Doing so would allow providers like Verizon additional flexibility to craft broadband services that better meet customers' needs, thus spurring additional investment in and competition for these already competitive services.

II. Background.

The Commission initiated this proceeding in February 2002, seeking to determine the appropriate regulatory classification for wireline broadband services.⁴ In doing so, the Commission appropriately recognized that “[t]he widespread deployment of broadband infrastructure has become the central communications policy objective of the day,” and that

⁴ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 FCC Rcd 3019 (2002) (“*NPRM*”).

“broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market.” *NPRM* ¶¶ 1, 5. The Commission then tentatively concluded that “the provision of wireline broadband Internet access service is an information service,” and that “the transmission component of retail wireline broadband Internet access services provided over an entity’s own facilities is ‘telecommunications’ and not a ‘telecommunications service.’” *Id.* ¶ 17. In addition, the Commission sought comment on the appropriate regulatory classification when any “entity provides only broadband transmission on a stand-alone basis, without a broadband Internet access service.” *Id.* ¶ 26. The Commission asked commenters to “address what the appropriate statutory classification of broadband transmission should be when it is not coupled with the Internet access component. . . . [and] the circumstances under which owners of transmission facilities offer broadband transmission on a private carriage basis.” *Id.*

In response to the *NPRM*, Verizon supported the Commission’s conclusion that wireline Internet access services constitute information services that should be subject to a minimal regulatory regime under Title I, similar to the Commission’s previous determination with respect to cable modem service – the dominant broadband service sold to mass market consumers.⁵ Verizon – again with the support of other parties⁶ – further argued that the Commission’s

⁵ See, e.g., Comments of Verizon, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33 (filed May 3, 2002) (“*Verizon Comments*”).

⁶ See, e.g., Letter from Cronan O’Connell, Qwest, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 7 (filed Aug. 8, 2003) (arguing that Qwest and other local telephone companies lack market power over ATM and Frame Relay, and should not be subject to common carrier regulation); Letter from Cronan O’Connell, Qwest, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 13-18 (filed May 23, 2003); Letter from Whit Jordan, BellSouth, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 7 & 16 (filed Oct. 16, 2002); Letter from Jonathan J. Boynton, SBC, to Marlene H. Dortch,

broadband policy objectives, the mandate of Section 706 to encourage broadband deployment, and relevant Commission precedent all warranted the same private carriage treatment for other broadband transmission services even when not used for Internet access services, including packetized broadband transmission services like ATM and Frame Relay.⁷ Throughout the course of this proceeding, Verizon repeatedly explained both the propriety and necessity for treating these broadband transmission services as private carriage offerings under Title I, and provided the factual record to support such a determination.⁸ Among other things, Verizon demonstrated that these services are innovative services being offered in a highly competitive market to sophisticated customers – precisely the type of services that the Commission previously has recognized should be subject to only minimal regulation under Title I, rather than misplaced, inefficient and unnecessary common carrier regulation. Moreover, Verizon explained that common carrier regulation is particularly troubling with respect to broadband transmission services sold to enterprise customers because these customers – who frequently have regional, national or international communications needs – demand integrated services and customized

FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 9-11 (filed Sept. 26, 2002).

⁷ *Verizon Comments* at 9-23.

⁸ See, e.g., *Verizon Comments*, at 9-23; Reply Comments of Verizon, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 11-44 (filed July 1, 2002); Broadband Fact Report, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 26-31 (filed May 3, 2002) (Attachment A to *Verizon Comments*) (“2002 Broadband Fact Report”); Letter from Ann D. Berkowitz, Verizon, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33 (filed June 25, 2003) (“Enterprise Market Presentation”); Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 17-19 (filed Nov. 13, 2003); Broadband Fact Report, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, at 24-26 (filed March 26, 2004) (“March 2004 Broadband Fact Report”).

solutions that are difficult to satisfy under common carrier regulation, particularly when the regulations of multiple jurisdictions apply.⁹

Despite the robust record in this proceeding demonstrating that broadband transmission services like ATM and Frame Relay should be subject to Title I regardless of whether they are used for Internet access, the Commission's *Title I Broadband Order* declined to so hold. Instead, the Commission concluded that "other wireline broadband services, such as stand-alone ATM service, frame relay, gigabit Ethernet service, and other high-capacity special access services" lack the "information-processing capabilities" of broadband Internet access services. *Title I Broadband Order* ¶ 9. While that may mean that these stand-alone transmission services are not being used as an input to Internet access or another information service, the order says nothing about whether these stand-alone services can or should be treated as private carriage offerings under Title I. Instead, the order skips past this critical issue and simply assumes these stand-alone services would be offered as "telecommunications services . . . subject to current Title II requirements." *Id.* The Commission did acknowledge, however, that these exact same broadband transmission services should not be subjected to common carriage regulation when they are provided either as a "wholesale input to ISPs," or are offered as part of an Internet access service. *See id.* ¶¶ 103-104. The Commission acknowledged that "the current record does not support a finding of compulsion that the transmission component o[f] wireline broadband Internet access service is a telecommunications service as to the end user." *Id.* ¶ 106. As we demonstrated previously, and address again below, the same is true when these services are offered on a stand-alone basis and not as part of an Internet access service.

⁹ *Enterprise Market Presentation* at 7 & 11.

III. The Commission Should Encourage Deployment of All Innovative and Competitive Broadband Services, Including ATM and Frame Relay, by Allowing Them to Be Offered on a Private Carriage Basis under Title I, Even When Those Services Are Not Used for Internet Access.

The record in this proceeding clearly demonstrates that all wireline broadband services – and not merely broadband Internet access services – are subject to intense competition and that providers should be permitted to offer these services on a private carriage basis under Title I. And this is certainly true for broadband transmission services like ATM and Frame Relay that are sold to sophisticated enterprise customers, primarily by providers who have long been exempt from Title II’s most onerous requirements. Moreover, the Commission’s recent order already recognizes that these same services may be offered on a private carriage basis when used as an input to an integrated Internet access service. Accordingly, Verizon respectfully urges the Commission to reconsider its order in this limited regard and to hold that stand-alone broadband transmission services may be offered on a private carriage basis under Title I, regardless of whether they are sold as part of an Internet access service.

A. Broadband Transmission Services Are Not the Type of Services Warranting Common Carrier Treatment.

The competitive nature of broadband transmission services compels the conclusion that these services may be sold on a private carriage basis under Title I. The Act defines a “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.”¹⁰ The Commission previously has found that the definition of telecommunications services “is intended to encompass only telecommunications provided on a common carrier basis” – that is,

¹⁰ 47 U.S.C. § 153(46).

telecommunications offered not simply to the public, but “indifferently [to] all potential users.”¹¹ However, unless a provider chooses to offer services in that manner, then precedent also recognizes that common carriage treatment cannot be imposed absent the presence of market power with respect to such services – something local telephone companies and other providers alike lack with respect to stand-alone broadband transmission services.

Consistent with this two-step approach, the Commission has made it clear that compelled Title II treatment is justified only to prevent an abuse of market power. Where competition restrains market power, the Commission can and must let market forces, rather than Title II regulations, guide the development of the marketplace.¹² In fact, where such competition is present, the Commission has often either mandated that services or facilities be taken outside of Title II completely, or allowed telecommunications providers to choose whether to offer service on a common- or non-common-carrier basis, particularly when those services are innovative or involve emerging technologies.¹³

The Commission’s *Title I Broadband Order* reaffirms the two-step approach to determining whether common carrier regulation applies, correctly recognizing that broadband

¹¹ *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 9177-78, ¶ 785 (1997).

¹² See *AT&T Submarine Systems, Inc.*, 13 FCC Rcd 21585, ¶ 9 (1998) *aff’d*, *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999); see also, e.g., *Cox Cable Communications, Inc., Commline, Inc. and Cox DTS, Inc.*, 1 FCC Rcd 561, ¶ 5 (1986) (finding no “compelling reason” to impose common carrier regulation on a carrier that had “little or no market power”); see generally Michael Kende, Office of Plans and Policy, FCC, *The Digital Handshake: Connecting Internet Backbones* at 12 (OPP Working Paper No. 32, Sept. 2000) (common carrier regulation “serve[s] to protect against anti-competitive behavior by telecommunications providers with market power. In markets where competition can act in place of regulation as the means to protect consumers from the exercise of market power, the Commission has long chosen to abstain from imposing regulation.”).

¹³ See, e.g., *Computer & Communications Indus. Assoc. v. FCC*, 693 F.2d 198, 208-09 (D.C. Cir. 1982) (“*CCIA*”) (affirming the reasonableness of the Commission’s determination that enhanced services and customer premises equipment were outside the scope of Title II); see also *Philadelphia Television Broad. Co. v. FCC*, 359 F.2d 282 (D.C. Cir. 1966).

transmission services that are used as inputs to an Internet access service fall under Title I. In this context, the Commission noted that “the transmission component of wireline broadband Internet access service is a telecommunications service only if one of two conditions is met: the entity that provides the transmission voluntarily undertakes to provide it as a telecommunications service; or the Commission mandates, in the exercise of our ancillary jurisdiction under Title I, that it be offered as a telecommunications service.” *Title I Broadband Order* ¶ 103. The D.C. Circuit has followed the same approach, holding that common carrier regulation may only apply where a provider’s market power justifies the imposition of such intrusive requirements, unless the provider itself chooses to operate as a common carrier.¹⁴

Other, well-established judicial precedent further confirms the Commission’s authority to permit private carriage treatment where a provider lacks market power. As the D.C. Circuit confirmed when it upheld the Commission’s landmark decision to classify information services and CPE under Title I, “the latitude accorded the Commission by Congress in dealing with new communications technology includes the discretion to forbear from Title II regulation” by classifying services as non-common carriage under Title I.¹⁵ In that decision, the court approved the FCC’s use of private carriage in place of common carriage and held that “the public interest touchstone of the Communications Act, beyond question, permits the FCC to allow the marketplace to substitute for direct Commission regulation in appropriate circumstances.”¹⁶

¹⁴ *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (“The key factor is that the operator offer indiscriminate service to whatever public its service may legally and practically be of use. In making this determination, we must inquire, first, whether there will be any legal compulsion thus to serve indifferently, and if not, second, whether there are reasons implicit in the nature of [the service’s] operations to expect an indifferent holding out to the eligible user public.”).

¹⁵ *CCIA*, 693 F.2d at 212.

¹⁶ *World Communications, Inc. v. FCC*, 735 F.2d 1465, 1475 (D.C. Cir. 1984) (citation omitted).

Subsequently, the Commission has used this discretion to allow non-common-carrier provision of many types of innovative services as they have developed, including satellite services,¹⁷ submarine cables,¹⁸ for-profit microwave systems,¹⁹ dark fiber,²⁰ and various mobile services,²¹ to name just a few.²²

The same private carriage approach is appropriate with respect to stand-alone broadband transmission services, as confirmed by the Commission's decision in the *Cable Modem Declaratory Ruling* and the *Title I Broadband Order*, as well as by the Supreme Court's decision in *Brand X*. In the *Cable Modem Declaratory Ruling*,²³ the Commission decided that any "stand-alone transmission service" offered by cable companies to ISPs would be a "private

¹⁷ *Licensing Under Title III of the Communications Act of 1934, as amended*, 8 FCC Rcd 1387 (1993) (allowing certain satellite services on a private carriage basis, including mobile voice, data, facsimile, and position location for both domestic and international subscribers); *Application of Loral/Qualcomm Partnership, L.P.*, 10 FCC Rcd 2333 (1995) (allowing use of the Globalstar system for mobile voice, data, facsimile, and other services as a non-common carrier).

¹⁸ *AT&T Submarine Systems, Inc.; FLAG Pacific Limited*, 15 FCC Rcd 22064 (2000).

¹⁹ *See, e.g., General Telephone Company of the Southwest*, 3 FCC Rcd 6778 (1988) (providing that for-profit microwave systems may be offered as private carriage, even if interconnected with the public switched telephone network).

²⁰ *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994).

²¹ *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 6 FCC Rcd 6601 (1991); *Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*, 89 F.C.C.2d 58 (1982) (dispatch services may be offered either on a common or non-common carrier basis); *Petition for Reconsideration of Amendment of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorization*, 98 F.C.C.2d 792 (1984) (private carrier paging system may be offered either on a common or non-common carrier basis).

²² A listing of further examples was included as Exhibit C to *Verizon Comments*.

²³ *Inquiry Concerning High-Speed Access to Internet over Cable and Other Facilities*, 17 FCC Rcd 4798 (2002) ("*Cable Modem Declaratory Ruling*").

carrier service and not a common carrier service.”²⁴ *Id.* ¶ 54. The Commission recognized that Title I treatment is appropriate where a provider deals with selected customers “on an individualized basis” rather than offering services “indiscriminately.” *Id.* ¶ 55. The Supreme Court’s decision in *Brand X* subsequently affirmed the Commission’s application of Title I to cable operators’ broadband services. *NCTA v. Brand X Internet Servs.*, 125 S. Ct. 2688 (2005). And, directly to the point here, the Court also recognized that “[t]he Commission has long held that ‘all those who provide some form of transmission services are not necessarily common carriers.’” *Id.* at 2706 (citation omitted).

Likewise, as discussed above, the Commission again concluded in the *Title I Broadband Order* that broadband transmission services – identical to those at issue here – may be offered on a private carriage basis when used as part of an Internet access service. *Title I Broadband Order* ¶ 103. As was true in the context of cable providers, the Commission noted that it expected “a collection of individualized arrangements” by providers who sell these broadband transmission services for use in Internet access services, and concluded that private carriage treatment was appropriate. *Id.*

The Commission’s analysis in this regard is no less applicable when these same services are sold to sophisticated enterprise customers for uses other than Internet access. No provider has market power with respect to any broadband transmission services, whether or not those services are used to access the Internet. And the absence of any such market power precludes compulsory common carrier treatment of these services. Moreover, the sophisticated customers who purchase these broadband transmission services demand individualized solutions and

²⁴ In fact, even before the Commission’s *Cable Modem Declaratory Ruling*, cable companies (and satellite and wireless companies) were free to offer broadband transmission on a non-common-carrier basis – or, indeed, not to offer transmission on a stand-alone basis at all.

arrangements that are best handled through “individualized arrangements.” Thus, as Verizon demonstrated throughout this proceeding, the strong and increasing competition for broadband services compels the Commission to classify *all* broadband transmission under Title I, whether or not those transmission services happen to be used to access the Internet.

Nor does the current Title II treatment of broadband services support a contrary conclusion. The Commission’s treatment of local telephone company broadband services under Title II until now has not been the product of a considered decision on the part of the Commission. Instead, Title II has been applied to wireline broadband reflexively, through “regulatory creep.” That is, because the telephone companies provided voice services subject to Title II, the Commission reflexively subjected them to Title II regulation in their provision of broadband as well. But the mere fact that local telephone companies are regulated under Title II when they provide narrowband voice transmission provides no impediment to regulating their broadband transmission under Title I. Indeed, it is well established that telephone companies can act as non-common carriers when they offer transmission services or facilities, just as they can when they offer other types of services.²⁵ As the D.C. Circuit has noted, “[w]hether an entity in a given case is to be considered a common carrier” turns not on its typical status but “on the particular practice under surveillance.”²⁶

²⁵ See, e.g., *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (upholding regulation of undersea fiber optic telecommunications cable on non-common carrier basis); *Southwestern Bell Tel. Co.* (recognizing provision of dark fiber on non-common carrier basis); *FLAG Pacific Limited*, 15 FCC Rcd 22064 (2000) (involving undersea telecommunications cable on a non-common carrier basis); *FLAG Atlantic Limited*, 15 FCC Rcd 21359 (1999) (same).

²⁶ *Southwestern Bell Tel. Co.*, 19 F.3d at 1481; see also *NARUC v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (finding it “logical to conclude that one can be a common carrier with regard to some activities but not others”).

By eliminating in this context the counterproductive and expensive Title II regulation of broadband transmission services sold by local telephone companies, the Commission would allow local telephone companies – just like all other competitors – to negotiate flexible, mutually beneficial terms and conditions with their customers. Scrapping Title II’s stringent tariffing system in the context of these competitive and innovative services also would create a regulatory environment conducive to the very substantial further investment needed to bring about widespread broadband deployment and would prevent this unnecessary regulation from further distorting a vibrantly competitive market. *See Title I Broadband Order* ¶ 3.

B. The Robust Competition for Broadband Transmission Services Demonstrates the Lack of Any Need for Common Carrier Regulation.

The competitive nature of broadband transmission services confirms this conclusion. Stand-alone broadband transmission services sold to enterprise customers are subject to intense competition, and local telephone companies have never had market power with respect to these services. In brief terms, no providers – and certainly no local telephone company – has market power over broadband transmission services. The larger business segment is typified by vigorous, well-funded competitors; massive recent investments sunk into fiber and packet switches; and large, sophisticated customers with long-term contracts. All of these factors prevent any exercise of market power by local telephone companies or any other providers.²⁷

Even after Verizon completes its merger with MCI, the combined entity will be a minority player in the competition for broadband transmission services. As Verizon has

²⁷ Verizon Broadband Non-Dominance Comments, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, at 19-22 (filed Mar. 1, 2002); Verizon Broadband Non-Dominance Reply Comments, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket NO. 01-337, at 26-30 (filed Apr. 22, 2002).

previously explained, customers of these services have many alternatives from whom they can purchase broadband services such as ATM and Frame Relay.²⁸ In 2004, Verizon accounted for only about a 5.1 percent market share of ATM revenues, and approximately a 4.9 percent share of ATM revenues nationally.²⁹ Although the combined entity will be an important provider of these services, it certainly will not be in any position to exercise market power. Instead the vast majority of these services (to the tune of 75 percent or more) still will be provided by other players, and Verizon will still face stiff competition from SBC/AT&T, Sprint Nextel, Qwest, Level 3, XO and a host of other providers.³⁰ Any attempt by local telephone companies to raise the price or reduce their output of ATM, Frame Relay, gigabit Ethernet or other broadband services would lead customers to defect to the many other suppliers of the same services who are ready and willing to supply these services.

Moreover, a number of competing last-mile technologies – including satellite, fixed wireless, third-generation (“3G”) wireless, broadband over power lines (“BPL”), and Wi-Fi – eliminate any “bottleneck” concerns and provide still further competition today, with the promise of even greater competition to come.³¹ For example, a study by In-Stat/MDR found that 41 percent of “enterprises” (which is defined as businesses with 5,000 or more employees) were using cable modem service, 40 percent were using fixed wireless, and 21 percent were using

²⁸ See, e.g., *2002 Broadband Fact Report*, at 26-31; *Enterprise Market Presentation*; *March 2004 Broadband Fact Report*, at 24-26.

²⁹ M. Bowen, *et al.*, Schwab Soundview Capital Markets, *AT&T Corp.* at 3 (Jan. 21, 2004).

³⁰ See, e.g., *See, e.g., 2002 Broadband Fact Report*, at 26-31; *Enterprise Market Presentation*; *March 2004 Broadband Fact Report*, at 24-26; see also Letter from Dee May to Marlene H. Dortch, *Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Attachment 1 (filed Sep. 14, 2005).

³¹ See, e.g., *Fourth Report to Congress on Availability of Advanced Telecommunications Capability in the United States*, 19 FCC Rcd 20540, 20553-20562 (2004).

satellite, in place of or in addition to other alternatives such as high-speed ILEC lines.³² With respect to the “middle market” (which is defined as businesses with between 500 and 5,000 employees), In-Stat/MDR reported that 32 percent were using cable modem, 29 percent fixed wireless, and 9 percent were using satellite.³³ In addition, the study found that 40 percent of enterprise businesses and 38 percent of middle-market businesses plan to use cable modem in the next 12 months, and that 54 percent and 44 percent, respectively, plan to use fixed wireless within that time.³⁴ Under these circumstances, imposing Title II common carrier regulations and the *Computer Inquiry* rules on one (and only one) class of service providers is affirmatively counterproductive, and continuing this lopsided treatment will jeopardize the continued development of these innovative broadband services on a competitive basis.

³² K. Burney & C. Nelson, In-Stat/MDR, *Cash Cows say “Bye-Bye”: Future of Private Line Services in US Businesses (5+ Employees)*, at 19, Table 9 (Dec. 2003). (“*In-Stat/MDR December 2003 Study*”); *March 2004 Broadband Fact Report* at 25.

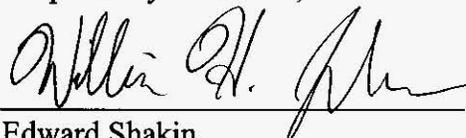
³³ *In-Stat/MDR December 2003 Study*.

³⁴ *Id.* at 19, Table 10.

CONCLUSION

The evidence adduced in this record showing the state of competition and local telephone companies' lack of market power for *all* broadband services, including specifically stand-alone broadband transmission services like ATM and Frame Relay, strongly supports the conclusion that Title II is the wrong regulatory pigeonhole for any wireline broadband services.

Respectfully submitted,



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November 16, 2005

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Verizon telephone companies

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

ATTACHMENT 2

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

In the Matter of

Appropriate Framework for Broadband Access
to the Internet over Wireline Facilities

CC Docket No. 02-33

Universal Service Obligations of Broadband
Providers

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 Docket Nos. 95-20, 98-10

**REPLY COMMENTS IN SUPPORT OF VERIZON'S PETITION FOR LIMITED
RECONSIDERATION OF THE TITLE I BROADBAND ORDER**

I. INTRODUCTION AND SUMMARY

The *Title I Broadband Order*¹ took an important step to benefit both consumers and competition by recognizing that wireline facilities-based providers may sell broadband transmission services under Title I of the Communications Act, either on a private carriage basis as a wholesale input to an affiliated or unaffiliated ISP's wireline broadband Internet access service, or as an information service when part of the facilities-based provider's own integrated wireline broadband Internet access service. As Verizon has explained, it fully supports that decision, which will enable Verizon and other wireline facilities-based providers to compete more effectively with other broadband Internet access providers, which have long been outside of Title II regulation.

¹ Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005) ("*Title I Broadband Order*").

The Commission, however, stopped short on one of the issues raised in the NPRM² and addressed extensively in the comments of parties on both sides of the issue — whether mandatory common carrier regulation should apply when wireline facilities-based providers sell broadband transmission service that will not be used as part of an Internet access service. Wireline facilities-based providers sell stand-alone packetized broadband transmission services, such as ATM and Frame Relay services, primarily to large enterprise customers. As the record here demonstrates — and as the Commission recently reconfirmed in approving the combinations of Verizon and MCI and SBC and AT&T — competition to provide these services is already robust. Moreover, the customers that purchase these services are highly sophisticated and utilize competitive bidding processes that further prevent any single provider from exercising market power. For these reasons, under long-standing court and Commission precedent, there is no justification for compelling wireline facilities-based providers to offer *any* broadband transmission services on a common carrier basis. Instead, all such services should be permitted to be offered on a private carriage basis under Title I.

The comments in opposition to Verizon’s petition lack merit. *First*, Verizon’s petition for limited reconsideration is procedurally proper: the NPRM expressly raised the question whether common carrier regulation applies to broadband transmission service offered separate from Internet access, yet the Commission did not substantively address that issue despite the fact that parties on both sides of the issue commented extensively on it.

Second, the commenters are wrong about the applicable legal standard: the lack of market power is a sufficient ground for not mandating that wireline facilities-based carriers offer

² Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 FCC Rcd 3019 (2002) (“NPRM”).

broadband transmission service on a common carrier basis, and the fact that carriers do so today as a matter of regulatory compulsion is irrelevant to the common carrier inquiry.

Third, the commenters' claims that incumbent LECs have market power for broadband transmission services is directly contrary to the record here and the Commission's determinations in the *Verizon-MCI Order*³ and *SBC-AT&T Order*⁴ that there is already robust competition to provide broadband transmission services. Moreover, those claims are based on a fundamental confusion about the wires that physically carry the transmission and the electronics that perform the broadband and packet functions. Even after Verizon's petition is granted, Verizon and other incumbent LECs will continue to offer access to existing TDM-based transport, either on a common carrier basis or as UNEs (to the extent the statutory impairment standard is satisfied). Other carriers can continue to provide their own broadband services by attaching their own packet switches to any such facilities obtained from incumbents, and the commenters make no claim — nor could they — that there is any impediment to the self-provision of such switches.

Fourth, the conditions adopted as part of the Commission's approval of the combination of Verizon and MCI pose no bar to a ruling granting Verizon's petition. Although Verizon intends to comply fully with the terms of those conditions, the existence of the conditions has no bearing on the appropriate regulatory classification of the wireline broadband transmission services at issue. Those conditions say nothing about the appropriate regulatory classification of any service Verizon sells.

³ Memorandum Opinion and Order, *Verizon Communications Inc. and MCI Inc., Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433 (2005) ("*Verizon-MCI Order*").

⁴ Memorandum Opinion and Order, *SBC Communications Inc. and AT&T Corp., Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290 (2005) ("*SBC-AT&T Order*").

II. VERIZON’S REQUEST FOR RECONSIDERATION IS WITHIN THE SCOPE OF THIS PROCEEDING

In the NPRM, the Commission expressly directed commenters to “address what the appropriate statutory classification of broadband transmission should be when it is *not coupled with the Internet access component.*” NPRM ¶ 26 (emphasis added). The Commission, moreover, instructed commenters to “discuss how judicial and Commission definitions of common carriage might apply” to such broadband transmission, including “the standards for private and common carriage that they deem appropriate for broadband transmission, whether using xDSL or other wireline technologies.” *Id.* ¶ 26 & n.64 (emphasis added). Verizon, therefore, submitted comments demonstrating that all wireline broadband transmission services, including packetized broadband transmission services like ATM and Frame Relay, should be classified under Title I, even when provided separate from Internet access service.⁵ The Commission, however, did not address that showing in the *Title I Broadband Order*, concluding only that stand-alone wireline broadband transmission is not an information service. Because that ruling is not dispositive of the question whether such transmission *must* be offered on a common carrier basis, Verizon filed this petition for limited reconsideration.

Some commenters, however, claim that Verizon’s request for reconsideration is procedurally invalid. For example, Earthlink (at 1-2) complains that Verizon’s petition repeats arguments found in its comments and cites prior Commission decisions rejecting petitions for reconsideration that merely repeat claims that the Commission had considered and rejected. But there can be no dispute that the Commission did not substantively consider or reject Verizon’s arguments, making them appropriate for inclusion in a petition for reconsideration.

⁵ See Verizon Comments at 9-23; Verizon Pet. at 4-5.

Nor is there any merit to claims by XO (at 4) and Broadwing (at 1-3) that the ruling Verizon sought in its comments and in its petition for reconsideration can be granted only in other proceedings pending before the Commission. The NPRM plainly sought comment on the “appropriate statutory classification of broadband transmission . . . when it is not coupled with [an] Internet access component” and, moreover, made express reference to the question of “how judicial and Commission definitions of common carriage might apply” to such transmission. NPRM ¶ 26. Verizon and others⁶ provided comments demonstrating that all broadband transmission services should be classified under Title I, regardless of whether they are provided in combination with or as an input to a broadband Internet access services. Others filed comments in opposition to these showings.⁷ In these circumstances, a ruling granting Verizon’s petition for limited reconsideration would easily satisfy the notice-and-comment requirements of the Administrative Procedure Act. *See New York v. EPA*, 413 F.3d 3, 32 (D.C. Cir. 2005) (“Central to notice-and-comment rulemaking is the ability of an agency to craft a final rule based on the comments of interested parties.”); *see also Crawford v. FCC*, 417 F.3d 1289, 1295-96 (D.C. Cir. 2005) (explaining that the notice-and-comment requirement standard is satisfied where “affected part[ies] should have anticipated the agency’s final course in light of the initial notice,” particularly where the agency “was merely doing that which [it] announced it would do”) (internal quotation marks omitted).⁸ Moreover, the Commission has an obligation in notice-and-comment proceedings to address explicitly arguments raised by commenters that, as here,

⁶ *See* Verizon Pet. at 4 n.6.

⁷ *See, e.g.*, AOL Time Warner Reply Comments at 16-17; AT&T Reply Comments at 43-46.

⁸ In any event, it is settled that “actual notice will render” an alleged deficiency in the notice “harmless.” *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983).

are within the scope of the proceeding. *See, e.g., Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 468 (D.C. Cir. 1998) (“An agency must . . . demonstrate the rationality of its decision-making process by responding to those comments that are relevant and significant.”).

III. THE COMMISSION SHOULD GRANT THE PETITION AND PERMIT WIRELINE BROADBAND SERVICE PROVIDERS THE OPTION OF OFFERING ALL BROADBAND TRANSMISSION SERVICES ON A PRIVATE CARRIAGE BASIS UNDER TITLE I

A. Under the Applicable Legal Standard, the Fundamental Question Is Whether Wireline Facilities-Based Providers Have Market Power with Respect to Wireline Broadband Services Not Used for Internet Access

In the 1996 Act, Congress adopted a definition of “telecommunications carrier” that provides that such carriers “shall be treated as a common carrier under th[e] [Communications Act] only to the extent that it is engaged in providing telecommunications services.” 47 U.S.C. § 153(44). “Telecommunications service,” in turn, is defined as the “offering of telecommunications for a fee” that is “effectively available directly to the public.” *Id.* § 153(46). As the Commission has held — and the D.C. Circuit has affirmed — these 1996 Act definitions effectively codify the two-part test established in *NARUC I* and its progeny.⁹ The Commission, therefore, was required to “consider whether, under the first part of the *NARUC I* test, the public interest requires common carrier” regulation of those wireline broadband transmission services. *Virgin Islands*, 198 F.3d at 925 (internal quotation marks omitted). As we have demonstrated, and discuss further below, there is no basis for compelling common carrier treatment of wireline broadband services — whether offered with or separate from a broadband Internet access

⁹ *See Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921, 925-27 (D.C. Cir. 1999); *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630, 641-43 (D.C. Cir. 1976) (“*NARUC I*”).

component — because incumbent LECs have “little or no market power” with respect to those services.¹⁰

The second part of the *NARUC I* test — whether the carrier has a *voluntary* “practice of . . . indifferent service that confers common carrier status”¹¹ — is relevant only in the *absence* of such regulatory compulsion, because it cannot be satisfied in the presence of such regulation. That is because a “binding requirement of . . . indifferent service” precludes the need for consideration of carriers’ voluntary practices, because courts and the agency “know what those [practices] will be if the FCC regulations are followed.” *NARUC II*, 533 F.2d at 609. As Verizon’s petition and the supporting comments make clear, but for the existing legal compulsion to offer wireline broadband services on a common carrier basis, Verizon and other incumbents LECs would make individualized decisions in the provision of their wireline broadband services to the enterprise customers that purchase this service — because that is what those customers demand. *See, e.g., Verizon Pet.* at 5-6, 11-12.

Indeed, in the *Title I Broadband Order* itself, the wireline broadband services that the Commission classified under Title I had previously been offered on a common carrier basis as a matter of regulatory compulsion. *See, e.g., Title I Broadband Order* ¶ 106. This determination, as the Commission recognized, is fully consistent with both the *Cable Modem Declaratory Ruling*¹² and the Supreme Court’s decision in *Brand X*. The Supreme Court’s decision confirms

¹⁰ *Cox Cable Communications, Inc., Comline, Inc. and Cox DTS, Inc.*, 102 F.C.C.2d 110, ¶ 27 (1985), *vacated as moot*, 1 FCC Rcd 561, ¶ 5 (1986); *see, e.g., Verizon Pet.* at 7-12.

¹¹ *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976) (“*NARUC II*”).

¹² Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798 (2002) (“*Cable Modem Declaratory Ruling*”), *aff’d, National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 125 S. Ct. 2688 (2005) (“*Brand X*”).

that the Commission acts properly when it relies on “contemporaneous market conditions” — rather than past regulatory requirements — in determining whether to classify a service under Title I. 125 S. Ct. at 2711.

Some commenters contend that a different legal standard applies, but there is no merit to those claims. CompTel (at 9-13) and XO (at 5), for example, assert that the fact that Verizon and other incumbent LECs currently offer wireline broadband services on a common carrier basis is dispositive, and that it is irrelevant that these carriers are doing so because the Commission has required them to do so. But neither cites any authority in support of these claims and, as shown above, D.C. Circuit precedent establishes precisely the opposite rule. Indeed, in allowing existing DSL transport services to be offered on a private carriage basis, the Commission has rejected this same argument. *See Title I Broadband Order* ¶ 106 (“The previous orders . . . assumed . . . that the offering of DSL transmission on a common carrier basis was a telecommunications service. These decisions, however, did not address the important public interest issue we address in this Order — whether this broadband transmission component must continue to be offered . . . on a common carrier basis.”). Moreover, that same decision and other court precedent make clear that the Commission has authority to hold that services that were “initially treated as common carrier offerings” no longer need to be provided as such, if after “further inspection they [are] determined not to be common carriage communications offerings within the meaning of the Act.”¹³

¹³ *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1483 (D.C. Cir. 1994); *see Computer & Communications Indus. Ass’n v. FCC*, 693 F.2d 198, 210 (D.C. Cir. 1982) (upholding the Commission’s conclusion that a service “originally regulated under Title II” “is not a common carrier service” based on the Commission’s finding of the existence of “healthy competition” in a “competitive market” by non-common carriers).

XO (at 4-5) similarly argues that the existence of competition is irrelevant to the question whether wireline broadband services must be offered on a common carrier basis when sold apart from an Internet access component. But its argument reduces to the claim — rejected by the Commission in a decision upheld by the D.C. Circuit — that 1996 Act’s definition of “telecommunications service” eliminated, rather than codified, the two-part *NARUC I* test. *See Virgin Islands*, 198 F.3d at 925-27. CompTel (at 8 n.20) offers a more subtle, but equally erroneous claim: that the existence of a competitive market is relevant only with respect to services that have not yet been deployed.¹⁴ CompTel contends further that, for services that have already been deployed, the only question is whether the carrier offers them indifferently to the eligible public. Again, however, CompTel presumes that it makes no difference whether a service is offered indifferently to the public as a result of *regulatory compulsion* or a carrier’s voluntary choice. As shown above, the Commission precedent here and case law draw exactly that distinction.¹⁵

¹⁴ Presumably, Broadwing (at 3-4) is making a similar (and equally erroneous) point when it notes that ATM and Frame Relay are “legacy” services. Nothing in the *NARUC I* two-part test turns on whether a service is new or whether it has existed for some time. And as discussed above, the Commission is free to reconsider a previous decision that a particular service must be sold on a common carriage basis. *See Southwestern Bell*, 19 F.3d at 1483.

¹⁵ CompTel (at 14-19) goes to great length in an attempt to dispute our showing (at 10-11 & n.24) that granting Verizon’s petition is consistent with the *Cable Modem Declaratory Ruling* and the Supreme Court’s *Brand X* decision. But try as it might, CompTel cannot dispute that granting Verizon’s petition would remove burdens from wireline facilities-based carriers that have never applied to, or were long ago eliminated for, other providers of broadband transmission services. For example, more than a decade ago, the Commission gave providers of satellite transmission services the option of offering transmission services on a private carrier basis under Title I. *See Declaratory Ruling, Licensing Under Title III of the Communications Act of 1934, as amended*, 8 FCC Rcd 1387 (1993); Order and Authorization, *Application of Loral/Qualcomm Partnership, L.P.*, 10 FCC Rcd 2333 (Int’l Bur. 1995). Likewise, the Commission permitted the same Title I treatment for, among other things, transmission services provided over submarine cables. *See Memorandum Opinion and Order, AT&T Submarine Systems, Inc.*, 13 FCC Rcd 21585 (1998), *aff’d, Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999). Even the traditional long distance companies and CLECs, which have

Finally, Time Warner Telecom (at 16-19) asserts that “in nearly every case” where the Commission has determined not to mandate the provision of a service under Title II, it did so “because of the availability of other *common carrier* offerings, not merely other *competitive* offerings.” Time Warner Telecom hardly substantiates its claim, pointing to only a handful of examples from among the many that Verizon identified where the Commission has not required the provision of service on a common carrier basis. *See* Verizon Pet. at 9-10 & n.22. In numerous instances, the Commission has held that it would not require provision of service on a common carrier basis without even mentioning, let alone considering, whether other carriers were providing the service on a common carrier basis.¹⁶ In addition, the Commission’s *Title I Broadband Order* itself came to the opposite conclusion.

Moreover, in the cases on which Time Warner Telecom relies, the Commission did not hold that the voluntary offering by some carriers of service on a common carrier basis was *necessary* before other carriers could be given the option of offering service on a private carriage basis. Instead, the Commission simply noted the existence of such carriers as part of its determination in those specific cases, under the first step of the *NARUC I* test, that the public interest did not require common carrier provision of those services.¹⁷ Importantly, Time Warner

remained nominally under Title II, have been permitted to sell broadband transmission services without the burdensome economic regulation and tariffing requirements imposed on Verizon and other ILECs.

¹⁶ *See, e.g.*, Memorandum Opinion and Order, *NorLight*, 2 FCC Rcd 5167 (1987); Order and Authorization, *Application of Loral/Qualcomm Partnership, L.P.*, 10 FCC Rcd 2333 (1995); Report and Order, *Amendment of Subpart C Part 90 of the Commission’s Rules to Permit Enterprises to be Licensed Directly in the Special Emergency Radio Service*, 3 FCC Rcd 3677 (1988); Memorandum Opinion and Order, *Amendment of Subpart C of Part 90 of the Commission’s Rules to Permit Commercial Enterprises to be Licensed Directly in the Special Emergency Radio Service*, 5 FCC Rcd 3471 (1990).

¹⁷ *See, e.g.*, *World Communications, Inc. v. FCC*, 735 F.2d 1465, 1474-75 (D.C. Cir. 1984).

Telecom cannot show, and does not even claim, that the public interest *in this case* requires the existence of some carriers offering broadband transmission on a common carrier basis. As shown below, the robust, existing competition to provide broadband transmission services to enterprise customers demonstrates that there is no public interest basis for requiring, as a condition for granting Verizon’s petition, that *some* companies in this competitive market segment voluntarily offer broadband transmission on a common carrier basis.

B. The Robust Competition for Broadband Transmission Services Demonstrates the Lack of Market Power and Therefore the Lack of Any Need for Mandatory Common Carrier Regulation

As Verizon has demonstrated, the record here shows that stand-alone broadband transmission services sold to enterprise customers are subject to intense competition, and incumbent LECs have never had market power with respect to these services. *See* Verizon Pet. at 13-15. The Commission, in its recent orders approving the combinations of Verizon and MCI and SBC and AT&T, has expressly recognized this. Indeed, the Commission found, rejecting commenters’ “contrary . . . assertions,” that “competition in the enterprise market is *robust*.” *SBC-AT&T Order* ¶ 73 n.223 (emphasis added). The Commission recognized that “myriad providers are prepared to make competitive offers” to enterprise customers and that “these multiple competitors ensure that there is sufficient competition.” *Verizon-MCI Order* ¶ 74; *accord SBC-AT&T Order* ¶ 73. In reaching this conclusion, the Commission made specific reference to Frame Relay services, one of the wireline broadband transmission services at issue here. *See Verizon-MCI Order* ¶ 74. The Commission recognized further that “new competitors” — including “systems integrators and managed network providers” and those offering “IP-VPNs and other converged services” — “are putting *significant competitive pressure* on traditional service providers” with respect to enterprise customers. *See id.* ¶ 75 n.229 (emphasis added).

In addition, the Commission recognized that the enterprise customers that purchase these wireline broadband transmission services are “highly sophisticated” and can “negotiate for significant discounts.” *Id.* ¶ 75. As the Commission explained, this level of sophistication is “significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because they show that these users are likely to make informed choices based on expert advice” to “seek out best-price alternatives.” *Id.* ¶ 76. This “process of competitive bidding and contract renegotiation is often sufficient . . . [to] compel[] the supplier to offer lower prices and improved service to retain the [enterprise] customer.” *SBC-AT&T Order* ¶ 74 n.226.

For all of these reasons, there is no public interest reason to compel wireline facilities-based providers to provide broadband transmission services on a common carrier basis. That is especially true because, as the Commission has recognized, contracts with enterprise customers “are typically the result of RFPs,” “are individually-negotiated,” and “are generally for customized service packages”¹⁸ — the antithesis of common carrier offerings.

Some of the commenters dispute the extent of competition to provide broadband transmission services to enterprise customers, *see, e.g.*, *Broadwing* at 4-7; *Earthlink* at 3-4; *Time Warner Telecom* at 8-11, but they ignore the Commission’s conclusions in the *Verizon-MCI Order* and the *SBC-AT&T Order*, as well as the record evidence here.¹⁹

¹⁸ *Verizon-MCI Order* ¶ 79.

¹⁹ Earthlink contends that a different result should apply when it and other dial-up Internet service providers seek to purchase wireline *broadband* transmission services for use with their provision of *narrowband* service to their customers. *See* *Earthlink* at 3. Contrary to Earthlink’s claim, the *Title I Broadband Order* does not “confirm[] that [*Computer II* and *Computer III*] obligations . . . continue in effect.” *Id.* On the contrary, the Commission held only that the *Title I Broadband Order* did not change “the current rules or regulatory framework for the provision of access to *narrowband* transmission associated with dial-up Internet access services.” *Title I Broadband Order* ¶ 9 n.15 (emphasis added). To the extent dial-up ISPs seek

Other commenters claim that Verizon continues to have market power in the provision of broadband transmission services because of alleged impediments that carriers face in deploying the loops and/or transport over which those broadband services are carried. *See, e.g.*, Broadwing at 7-10; Time Warner Telecom at 4-7, 12-16, 19-20; CompTel at 2-4. But the Commission rejected similar claims in granting Verizon a waiver to enable Verizon to obtain pricing flexibility for its advanced services.²⁰ That is because, as the Commission has recognized, such claims are based on a fundamental confusion about wireline broadband transmission services. Wireline broadband transmission services “are generally made up of packet switching equipment and facilities, such as Frame Relay or ATM switches,” and “a special access line connection” that reaches the end-user customer. *Verizon Pricing Flexibility Waiver Order* ¶ 10.

But, as the Commission has further recognized, “competitors do not have to rely on Verizon’s packet switching to provide their own advanced services to customers.” *Id.* ¶ 11. As an initial matter, carriers are provided wireline broadband transmission services without using either Verizon’s facilities or packet switching, by deploying their own facilities, or using third-party facilities, to serve these highly lucrative customers. In addition, carriers can — and already are — creating and selling their own broadband transmission services by combining “Verizon’s special access facilities” with *their own* “[p]acket switch[es].” *Id.* Those TDM-based special access facilities are beyond the scope of this petition and will remain available through federal

to purchase *broadband* transmission services, they are *already* covered by the Title I rulings in the present order. Thus, Earthlink is wrong (at 5-6) in claiming that the “provision of ATM and Frame Relay to ISPs” as part of a *broadband* Internet access service was not deregulated in the *Title I Broadband Order*. *See Title I Broadband Order* ¶ 9 n.15 (holding that the use of “ATM or frame relay transport” in “the[] network[]” does not “limit[] the scope of relief” the Commission provided for all wireline broadband transmission sold as a wholesale input for wireline broadband Internet access service).

²⁰ Memorandum Opinion and Order, *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services*, 20 FCC Rcd 16840 (2005) (“*Verizon Pricing Flexibility Waiver Order*”).

tariffs, subject to common carrier regulation, even after the Commission grants the relief sought here.²¹ And there can be no serious claim that other carriers are unable to deploy their own packet switches or connect those switches to special access facilities, given the Commission’s long-standing determination that carriers are not impaired without access to incumbents’ packet switches and the fact that carriers have already deployed many thousands of such switches.²²

Broadwing (at 11) asserts that granting Verizon’s petition creates the possibility of a price squeeze. But the Commission rejected virtually identical, and equally unsubstantiated,²³ claims in the *Verizon Pricing Flexibility Waiver Order*. As the Commission explained there, claims such as Time Warner Telecom’s “essentially restate allegations that special access rates are anticompetitive,” which the Commission “is addressing through the *Special Access NPRM*.” *Verizon Pricing Flexibility Waiver Order* ¶ 13. Verizon has also extensively rebutted the claims made in that proceeding and repeated in other proceedings. Because the Commission “is establishing a comprehensive record” in that proceeding, which it has explained will “enable it to asses any ‘price squeeze’ issues,” that is the “appropriate proceeding to address [these] arguments concerning special access . . . rates.” *Id.*

²¹ Those services will also remain subject — to the extent they are today — to the § 251(a) and (c) obligations that CompTel (at 3) erroneously asserts will be eliminated.

²² See, e.g., Order on Remand, *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 ¶¶ 205-209 (2005); Memorandum Opinion and Order, *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), et al.*, 19 FCC Rcd 21496 (2004) (forbearing from enforcing any requirement of BOCs to provide access to packet switches under § 271), *petition for review filed, Earthlink, Inc. v. FCC*, No. 05-1087 (D.C. Cir.)

²³ The only “support” Broadwing offers is a citation to a three-year old pleading in another docket. See Broadwing at 11 n.38. See *Verizon Pricing Flexibility Waiver Order* ¶ 13 (finding that “AT&T ha[d] not presented sufficient evidence in th[at] proceeding to establish a price squeeze”).

C. The Conditions on the Commission’s Approval of the Combination of Verizon and MCI Pose No Impediment to the Relief Verizon Seeks Here

Earthlink (at 4-5) asserts that Verizon’s petition is incompatible with four of the time-limited conditions adopted as part of this Commission’s approval of the combination the two companies. In fact, none of the conditions poses any impediment to the granting of Verizon’s petition. As an initial matter, Verizon plainly intends to comply fully with all of the conditions. But the existence of those conditions has no bearing on the question presented by the Commission’s NPRM and addressed by commenters on both sides — whether wireline broadband transmission service sold by wireline facilities-based providers that will not be used in as part of an Internet access service should be classified under Title I. That is because the conditions, by their plain terms, do not compel common carrier classification for any service, let alone the wireline broadband transmission services at issue here.

Indeed, the only condition specifically applicable to special access prices — which requires Verizon’s incumbent LEC entities not to “increase the rates in their interstate tariffs, including contract tariffs” for a period of “30 months from the Merger Closing Date” — expressly applies *only* to “DS1, DS3 and OCn special access services.” *Verizon/MCI Order* App. G, Spec. Acc. Cond. 5. The condition says nothing about whether the services that it does mention should be classified going forward as either common or private carriage services. Moreover, that condition expressly “does not apply” to the rates for “Advanced Services that would have been provided by [Verizon’s] separate Advanced Services affiliate under the terms of the *Bell Atlantic/GTE [Merger] Order*,” *id.* n.577, which encompasses all packet-switched

services including ATM, Frame Relay, and the other wireline broadband transmission services at issue here.²⁴ Therefore, there is no inconsistency between this condition and Verizon’s petition.

Similarly, the other conditions that Earthlink cites also do not address the regulatory classification of any service. Instead, those conditions state only that Verizon will provide reports of its performance under defined measurements for DS0, DS1, and DS3 and above facilities, and will not limit the availability of special access offerings to Verizon’s affiliates. *See id.* App. G, Spec. Acc. Conds. 1, 3, 4 & Attach. A.

For these reasons, none of the conditions to which Earthlink points prescribes a particular regulatory classification even for the services to which they apply and, therefore, none is an impediment to the ruling sought by Verizon’s petition.

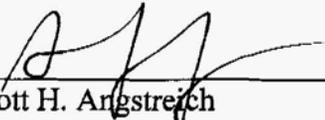
²⁴ *See* Memorandum Opinion and Order, *Applikation of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, 15 FCC Rcd 14032, App. D, ¶ 2 (2000) (“*Bell Atlantic/GTE Merger Order*”) (definition of “Advanced Services”).

CONCLUSION

For the foregoing reasons, and those set forth in Verizon's petition, the Commission should grant the petition for limited reconsideration.

Respectfully submitted,

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January 9, 2006

CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of January 2006, I caused a copy of the foregoing Reply Comments in Support of Verizon's Petition for Limited Reconsideration of the *Title I Broadband Order* to be served upon the parties on the service list below by first-class mail, postage prepaid.

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