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

In the Matter of	)	
Broadband Study Conducted by	)	GN Docket No. 09-47
The Berkman Center for Internet and Society	)	GN Docket No. 09-51
NBP Public Notice #13	)	GN Docket No. 09-137
	)	

COMMENTS OF BT AMERICAS INC.
NBP PUBLIC NOTICE #13

BT Americas Inc. ("BT") commends Harvard's Berkman Center on its recent draft study on Next Generation Connectivity. BT agrees with the draft study's primary conclusion that the adoption of open access regulations and an engaged regulator to implement them spurs the expansion of broadband deployment and uptake.

1. The Commission asks in its Public Notice if the study accomplished its purpose. The answer is yes. Policymakers must look outside their own jurisdictions and experiences for data to confirm or negate their hypotheses and assumptions. The Berkman Center's draft report does exactly this. It provides granular data across jurisdictions which, as it happens, results in challenging the Commission's operating assumptions over the last seven or eight years. Since about 2000, the Commission has operated under the assumptions that (i) incumbents must be granted regulatory holidays in order to secure investment in next generation technologies; and (ii) as long as there are two platform competitors competing in a market, it could be deregulated because there would be sufficient competition to ensure consumer benefits on broadband speeds, price, choice and services innovation. Presumably this was the Commission's hypothesis with regard not only to the residential, but also the small and medium-sized business consumer markets, and perhaps even the large business consumer markets. The Berkman draft study has been very useful in shining the light on whether these operating assumptions have held true in other jurisdictions across the world. The draft study's conclusion is a resounding, "NO." In fact, to the contrary, open access policies generally deliver better results on broadband deployment, speed, price, and uptake, and, if done in a manner to preserve open access objectives while

ensuring a mechanism for addressing risk associated with next generation deployment, can also result in investment in next generation technologies. This is consistent with BT's experience and the views of analysts such as Benoit Felten of the Yankee Group, who has been tracking and analyzing next generation deployments for a number of years. He states that, "[t]he history of copper unbundling in Europe and Asia shows that . . . the market grows all the faster for it [unbundling] and that the incumbent earns revenue from wholesale in addition." According to Felten, the only practical way to boost revenues and achieve faster payback on next generation fiber deployments is to pursue a wholesale model.[1] The Berkman study highlights regulated wholesale models being pursued outside the USA.

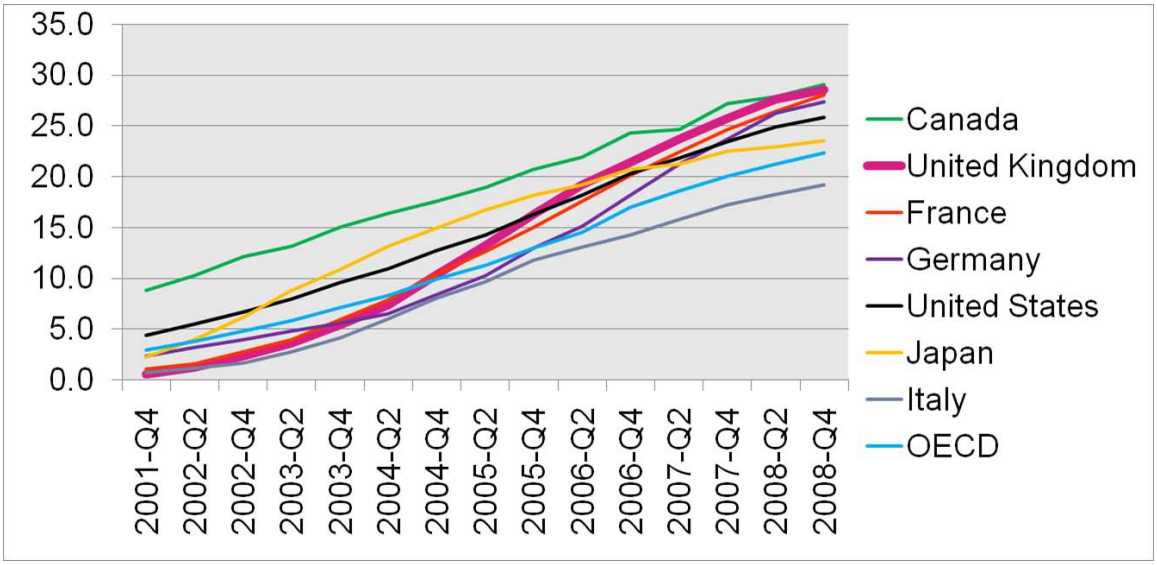
2. & 3. The Commission asks if the study provides a complete and objective survey and how accurately and comprehensively the study summarizes the broadband experiences of other countries. Based on BT's experience operating in various countries across the globe, the answer is yes, the study provides an objective granular survey. What would be helpful is a greater emphasis on trend data that could be mapped against countries pursuing open access policies versus countries pursuing deregulation to incentivize investment. Regulatory strategies mapped against trend data that is both historical and forward-looking including data on broadband penetration rates, pricing, speeds, network investment, fiber deployment, and fiber-based broadband service uptake, would more starkly illustrate that deregulation is **not** necessary to incentivize investment in next generation technologies. It would also show that open access policies produce consumer broadband benefits today while also producing next generation deployments because of intermodal **and** intramodal competition.

4. The Public Notice asks what weight the Commission should give to this study. The Commission should give this study tremendous weight. It should cause the Commission to stop in its tracks and reverse its policies of deregulating to incentivize investment. The Commission needs to ask itself if the USA missed out on a surge in broadband uptake by not pursuing open access policies and if so, by how much? The chart at Figure 1 shows a surge in broadband

[1] "Is Wholesale Key for FTTH Deployments?" IP Business, Nov 16 2009 available at http://www.ipbusinessmag.com/departments/article/id/522/is-wholesale-key-for-ftth-deployments.

uptake in the UK depicting accelerated uptake correlating with the implementation of the EC's framework, Ofcom's strategic review of the communications market and in 2005 the agreement by BT to functionally separate. The USA did not experience a similar surge. Why not?[2]

Figure 1 – G7 Broadband Penetration Per 100

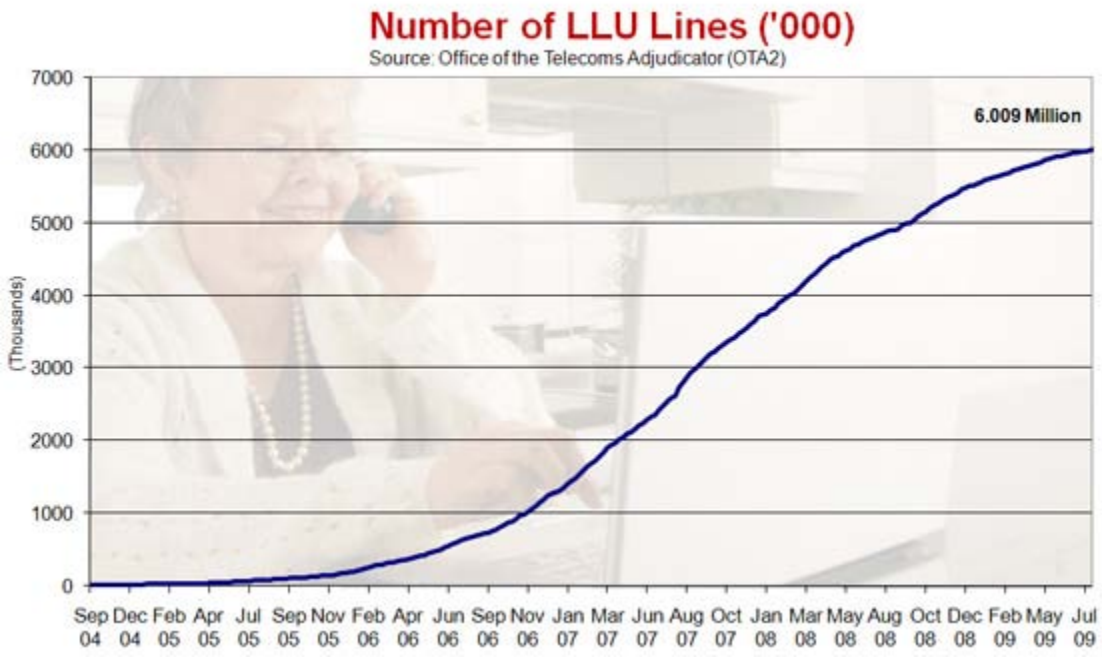


Source -OECD

What are the direct and indirect costs of not having experienced a surge in broadband uptake? It would be helpful for the Commission to quantify the costs and benefits to consumers and the US economy of pursuing deregulation "necessary" to incentivize investment and "two is enough" competition policies. An attempt to quantify benefits might incorporate the following type of analysis. In the UK's experience open access policies caused a surge in broadband penetration. Following the implementation of the functional separation of BT in September 2005, the number of unbundled lines sold by BT surged from 123,000 to over 6 million in July 2009. See Figure 2 below.

[2] While critics will argue that the penetration rates should be tested per household instead of per 100 inhabitants, this is just quibbling around the edges. What is important is to analyze trend data to determine what is happening over time. The most comprehensive trend data exists per 100 inhabitants so the Commission should use this data.

Figure 2



The growth depicted in the chart above is not growth that simply occurred because of the passage of time, but correlates directly to regulation of bottleneck assets and active oversight of implementation. Implementation of functional separation and the EC's regulatory framework helped to drive up broadband take-up and drive down fixed-line prices in the UK. In September 2005, 37% of households and small businesses had broadband; today the figure is 65%. Competition also has translated into lower bills for consumers. According to Ofcom research, consumers were paying on average £23.30 a month (excluding VAT) for a broadband DSL service delivered over a copper phone line in the last quarter of 2005. Today they are paying around £13.61 for the same service – an average savings of £9.69 a month. According to Ed Richards, Ofcom's Chief Executive, "In just four years unbundling has gone from a flicker on the dial to a major competitive force in telecoms. This has delivered the dual benefits of driving up broadband take-up and driving down prices."[3] In addition, the average UK household has

[3] See http://www.ofcom.org.uk/media/news/2009/8/nr_20090811.

Note that what was available were not only unbundled lines on an absolutely equivalent basis, but also other access products where BT was deemed to have significant market power. These other access products include various

experienced direct financial benefits of £70 a month from having a home broadband connection. In a study conducted by SQW Consulting for the Royal Mail Service in the UK,[4] they estimated that the direct financial benefits of broadband in the home are between £23 - £148 per month per UK household.[5] Ninety percent of the direct financial benefit (£63 per month on average) comes from **reduced household spending**, by using the Internet to search for the best available deals on products and services (whether those were then purchased online or off-line). Ten percent of the estimated direct financial benefit (£7 per month on average) comes from **increased income from household investments**, by using the internet to search for the best available investments.

- £23 per month for the 10% of households with the lowest income
- £70 per month for the **average** UK household
- £148 per month for the 10% of households with the highest incomes.[6]

For the sake of argument if one assumes that 50% of the growth in broadband uptake in the UK was due to open access policies and their effective implementation rather than the mere passage of time, then an additional 4.6 million of the UK's approximately 25 million households experienced direct financial benefits as a result of the UK's open access policies. The direct financial benefits to UK households amount to an enormous £4,422,795,000 each year. If one assumes 25% of the growth in broadband uptake was due to open access policies and effective

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flavors of DSL access and backhaul, Ethernet access and backhaul, and the UK equivalent of special access called Partial Private Circuits, that have been made available to competitors on a nondiscriminatory, transparent and price-regulated basis.

[4] SQW Consulting, "Broadband in the Home: An Analysis of the Financial Costs and Benefits," Sept. 2008, available at http://www.sqw.co.uk/file_download/138

[5] SQW examined fifteen cost categories (including insurance and mortgage interest, payments, holidays, electronics, and clothing) on which savings could be had by searching for deals on the Internet. These categories accounted for about 46% of UK household expenditures per 2006 spending data. SQW then estimated the typical percentage savings that could be obtained through the use of broadband internet in each expenditure category, and then applied that to the spending data to derive estimates of typical reductions in household expenditure. The remainder of the estimated direct benefit (c. £7 per month on average) came from increased income from household investments, by using the internet to search for the best available deals. SQW then set against the benefits the costs of a computer, printer, broadband connection and electricity.

[6] Id. at pp 4-19.

implementation, the direct financial benefits to UK households are still hugely impressive at £2,211,397,500 per year. This does not begin to quantify the indirect benefits to UK households in the form of increasing digital literacy, helping to find employment, and education for instance.

Small and medium-sized businesses ("SMEs") in the UK have similarly benefitted from the explosion in broadband take-up in the UK. Seventy-nine percent of UK SMEs that have business premises take broadband service. UK SMEs have experienced not only the benefits of reductions in broadband prices but also the direct and indirect financial benefits of accelerated broadband uptake. For instance, UK SMEs have a wider online customer base than they would otherwise have had if open access policies had not been implemented in the UK. This translates into a wider potential customer base that SMEs can target using cheaper online marketing techniques and lower costs from executing transactions with customers online. Furthermore, UK SMEs have many choices of providers providing them a wider suite of services to help them execute their business plans. There are at least nine national players other than BT and dozens of smaller broadband providers that compete intensely to serve the needs of SMEs. As a result of competition, there has been vast innovation in services in UK SMEs. Multiple broadband providers are offering not only communications services including bundles of broadband, voice and mobility services, but are also offering hardware and IT services such as PC sales and maintenance, LAN support, backup and security services. In addition, providers have pushed into the cloud computing and social networking space to offer SMEs online rentals of accountancy, employee expense management, and e-mail marketing campaign management tools as well as organizing online communities of businesses and customers that encourage social networking amongst other things. In the USA, by contrast, the Commission's Broadband Task Force reported to the Commission that "many small businesses don't have connectivity sufficient for new opportunities, like cloud computing."[7] In the USA, only 36% of the 14 million small and medium-sized businesses with business premises outside the home have a fixed broadband connection.[8] Compare this figure with the fixed line broadband penetration rate amongst UK

7 Broadband Task Force Delivers Status Report On February 17 National Broadband Plan, Sept. Commission Meeting, Sept. 29, 2009.

8 According to the U.S. Small Business Administration ("SBA") there were 29.2 million small businesses in the USA in 2008, 52% of which were home-based. Ergo 48% are not home-based. See "The Small Business Economy

SMEs which is 79%. Again, the small and medium-sized business market has been underserved in the USA because of a lack of emphasis on open access and vibrant competition that results from open access. Open access policies will result in earlier benefits being realized by consumers whether residential or business. This is borne out by the generally low rates of uptake of ILEC fiber-based broadband services that have been deployed.[9]

5. The Commission asks if additional studies are needed. BT does not believe additional studies are needed, but it would be helpful if some of the additional data points of the type discussed herein are available and the Commission asks itself the following questions –

(i) Is it better to have fiber deployment start earlier but experience lower broadband uptake and growth in the market from lower levels of competition?

(ii) Is it better to have fiber investment in the medium to longer term but higher levels of competition, broadband uptake and market growth in the short to medium term; or

(iii) Would fiber investment by ILECs have occurred without deregulation because of competitive pressures from cable?

2009,"available at http://www.sba.gov/advo/research/sb_econ2009.pdf and http://www.sba.gov/advo/stats/sbfaq.pdf. According to the Commission's Report titled "High Speed Services for Internet Access: Status as of June 30, 2008," the number of advanced fixed lines that are not advanced residential fixed lines are 5 million. The author assumes these non-residential lines must be business service lines (DSL, traditional wireline, cable, fiber, power line, and other). The author divided this 5 million figure by the approximate number of small and medium-sized businesses in the USA that have business premises which is 14 million to arrive at a penetration rate of 36%. This likely overstates the fixed line penetration rate amongst small and medium sized businesses with business premises because it assumes all the fixed line connections are taken by small and medium-sized businesses and none by large businesses.

[9] The take-up on AT&T's U-Verse fiber service amongst residential customers was only approximately 6 % in 2008 (1 million connections for approximately 17 million homes passed according to AT&T's 2008 Annual Report). For Verizon's FIOS service the take up was better at a little under 20% in 2008 (2.5 million FIOS Internet connection for 12.7 million households passed according to Verizon's 2008 Annual Report). The take up on fiber access broadband for small and medium sized businesses with business premises was very extremely small. As of June 2008, the FCC's Broadband Report states there were a total of approximately 207,000 fiber-based broadband connections for businesses (this figure is derived by subtracting the number of residential fiber-based broadband lines from the total number of fiber-based broadband lines) which represents a fiber-based penetration rate of 1.5% for 14 million small and medium-sized businesses with business premises in the USA.

CONCLUSION

The Berkman Center study is very important. The Commission should accord it significant weight. It should cause the Commission to take stock, determine if the USA has been losing out in terms of broadband deployment and uptake and quantify it.

Respectfully submitted,

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