

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

In the Matter of)
) **WC Docket No. 10-188**
Business Broadband Marketplace)

COMMENTS OF COMPTTEL

COMPTTEL respectfully submits these comments, pursuant to the Commission’s Public Notice released on September 15, 2010 (DA 10-1743) (“*Notice*”) in the above-referenced docket. In its *Notice* the Commission invites parties to comment on the current state of, and trends and issues in, business broadband markets. In particular the Commission seeks comment on the transmission services, technologies, or types of facilities that are used in the business broadband marketplace, the overall size of the marketplace, and the various marketplace trends.¹

In 2008, the Commission extensively expanded the scope of its FCC Form 477 data collection, requiring broadband providers to submit additional data on broadband service subscriptions to assist the Commission in the development of appropriate broadband policies.²

¹ *Notice* at 3.

² *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89, ¶ 1 (2008)(“Data Gathering Report and Order”).

Through the FCC Form 477, the Commission now collects the number of subscribers for each type of technology of services³ and distinguishes residential services from business services.⁴ Moreover, as discussed in the *Further Notice* of the data collection proceeding, a number of parties have pointed out that there currently exist industry analyses that offer pricing trend information.⁵ Thus, the Commission itself, through these resources, may be in the best position to determine the current state of the marketplace.

More importantly, however, while the data requested in the *Notice* may assist the Commission in monitoring the state of broadband use and deployment, the Commission needs to evaluate what *can be* the trends in business broadband marketplace with the implementation of the appropriate regulatory policies. As the authors of the FCC's Broadband Plan found, the competitiveness of markets for retail broadband services provided to small businesses, mobile customers and enterprise customers are dependent on the nation's regulatory policies for wholesale access and, as such, "the FCC should comprehensively review its current policies and develop a cohesive and effective approach to advancing competition through its wholesale access

³ *Data Gathering Report and Order* at ¶ 20.

⁴ *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, WC Docket No. 07-38, Order on Reconsideration, FCC 08-148, ¶6 (2008)("Order on Reconsideration").

⁵ *See Data Gathering Order*, ¶ 37, n. 132, *citing*, AT&T Comments at 27-28 ("[B]roadband pricing trend information is readily available to the Commission from a variety of sources and that most providers offer the same broadband packages at the same or similar pricing throughout their service areas."); Reply Letter from Edward Shakin, Verizon, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 15-17, filed July 16, 2007 (Verizon Reply Comments) ("Other parties who report on this information on a more frequent basis, including private analysts, are better positioned to collect pricing data and already provide reports on exactly this topic.").

policies.”⁶ Specifically the Commission needs to consider how past Commission decisions have negatively impacted competitors’ ability to provide service and innovation in the broadband marketplace and how those decision can be rectified to spur competition in the industry.

As COMPTTEL has previously stated, the Commission, under the guise of “promoting broadband deployment,” dismantled the unbundling legislation adopted by Congress in 1996, and as a consequence impeded the advancement of competitive broadband services in the United States. Specifically, over the past decade the Commission has relieved incumbent LECs from the Section 251 obligation with regard to certain fiber facilities and relieved incumbent LECs from the Section 251 obligation to offer the packetized functionality of hybrid loops on an unbundled basis.⁷ The Commission also granted forbearance from enforcing the incumbent LECs’ 271 obligations to offer broadband elements on an unbundled basis;⁸ failed to act on a Verizon petition for forbearance from the entirety of Title II and the *Computer Inquiry* requirements to its broadband services, resulting in a “deemed grant” of its request for relief;⁹

⁶ Federal Communications Commission, Connecting America: The National Broadband Plan, Chapter 4, pp. 48-49; <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“National Broadband Plan”).

⁷ *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003); *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Order on Reconsideration, 19 FCC Rcd 20293 (2004).

⁸ *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. §160(c)*; *SBC Communications, Inc.’s Petition for Forbearance Under 47 U.S.C. §160(c)*; *Qwest Communications International Inc Petition for Forbearance under 47 U.S.C. §160(c)*; *BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. §160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004).

⁹ FCC News Release, *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*, WC Docket No. 04-440 (rel. Mar. 20, 2006).

and, subsequently, relieved AT&T and Qwest from dominant carrier and *Computer Inquiry* regulation of their non-TDM based packet-switched broadband services and non-TDM based optical broadband services.¹⁰ Additionally, the Commission failed to provide adequate protection for the future use of copper facilities, facilities which through the advancement in technology competitors have been able to use to bring ever improving broadband services to its customers without incurring the staggering costs of building out its own facilities – a cost saving that could be passed on to consumers in a competitive retail market.

Nondiscriminatory access to these facilities at reasonable prices is critical for competitors' advancement in the business broadband marketplace. As COMPTTEL discussed in its December 7, 2009 letter to the Commission, new technologies are adding tremendous value to the legacy copper loop network that today, with the addition of electronic and pair bonding techniques, has become a critical platform for broadband/advanced services - particularly given the ubiquity of the network.¹¹ As discussed in Cbeyond's November 16, 2009 Petition for Expedited Rulemaking, applications providers such as Cbeyond are ready to provide small business with "big business" application (such virtual desktops, hosted digital image and file management, high-resolution video conferencing, broadcast/live video streaming, robust data protection, cloud-based backup, sophisticated video security systems, and cloud computing and software) if only they could get reasonable access to the loop bandwidth needed to provide these

¹⁰ *Petition of AT&T, Inc. for Forbearance under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules With Respect to Its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007); *Qwest Petition for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules With Respect to Its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 08-168 (rel. Aug. 5, 2008).

¹¹ Letter of Karen Reidy, COMPTTEL, to Marlene Dortch, FCC, GN Docket Nos. 09-47, 09-51, 09-137 and RM-11358, dated Dec. 7, 2009.

services.¹² Moreover, carriers have been asking for special access reform for what seems like an eternity. As ETI stated, “[w]ithout special access, there would be no Internet or any of the economic activity that rides on it. Banking, credit card, ATM, and most other financial transactions that drive the US economy depend critically upon the capabilities that this secure, dedicated access provides.”¹³ The Commission has found that wholesale special access service is a critical input for competitive carriers providing services to their retail enterprise customers, entities seeking to connect with the Internet backbone,¹⁴ and wireless broadband services.¹⁵

One of the recommendations in the FCC’s Broadband Plan was that “the FCC should comprehensively review its wholesale competition regulations to develop a coherent and effective framework and take *expedited action* based on that framework to ensure widespread availability of inputs for broadband services provided to small businesses, mobile providers and enterprise customers.”¹⁶ There are a number of avenues for the Commission to evaluate in ensuring access to appropriate network facilities. The Commission needs to re-evaluate its rules that allow incumbents to charge exorbitant rates – especially when granted pricing flexibility - for special access services, to dismantle the copper network, and to deny the unbundled access to certain critical facilities, and the Commission must establish rules implementing the RBOC 271

¹² Cbeyond Petition for Expedited Rulemaking, WC Docket No. 09-223, pp 3-4 (filed Nov. 16, 2009).

¹³ Economics and Technology, Inc. (“ETI”), *Special Access Overpricing and the US Economy, How Unchecked RBOC Market Power is Costing US Jobs and Impairing US Competitiveness*, p. ii, August 2007.

¹⁴ *In the Matter of AT&T Inc. and BellSouth Corporation Application of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 06-74, ¶ 27 (2007).

¹⁵ FCC Public Notice, FCC 07-123, p. 2 (2007).

¹⁶ *National Broadband Plan* at 26 and 28 (emphasis added).

obligations. Indeed, the Commission's Broadband Plan specifically recommends action on these particular issues. The Commission must not allow the substantial resources and analysis that went into the Broadband Plan, or the opportunity to truly advance broadband, be wasted – it should act now on these critical proceedings.

Respectfully submitted,

/s/

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