

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Implementation of Section 621(a)(1) of)
The Cable Communications Policy Act) MB Docket No. 05-311
of 1934 as amended by the Cable Television)
Consumer Protection and Competition Act)
of 1992)

**REPLY COMMENTS OF
THE HIGH TECH BROADBAND COALITION**

The High Tech Broadband Coalition (“HTBC”)¹ respectfully submits this Reply to the comments filed in response to the Notice of Proposed Rulemaking in the above-captioned docket.² HTBC agrees with the numerous commenters in this proceeding that have supported the Commission’s conclusion that carriers’ ability “to offer video to consumers and to deploy broadband networks rapidly are linked intrinsically.”³ Unreasonable refusal by local franchising authorities (“LFAs”) to grant competitive franchises would stand in the way of increased competition in the video market as well as the further deployment of broadband facilities. In determining what constitutes an unreasonable refusal, HTBC urges the Commission to interpret

¹ HTBC is comprised of the following trade associations: the Business Software Alliance; the Consumer Electronics Association; the Information Technology Industry Council; the National Association of Manufacturers; the Semiconductor Industry Association; and the Telecommunications Industry Association. The appendix attached hereto provides a detailed description of HTBC’s members.

² *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, MB Docket No. 05-311 (rel. Nov. 18, 2005).

³ *Id.* ¶ 1.

Section 621(a)(1) in a manner consistent with its obligation under Section 706 to encourage the deployment of advanced services to all Americans.

I. THE COMMISSION’S EFFORTS TO PROMOTE BROADBAND DEPLOYMENT HAVE BEEN SUCCESSFUL.

HTBC represents the leading trade associations of the computer, telecommunications equipment, semiconductor, consumer electronic, software, and manufacturing sectors. Although its members each serve as a major force for advocating their public policy objectives, HTBC was established to highlight and advocate their common interest in public policies that promote broadband deployment and competition. Widespread broadband adoption is essential to ensure continued growth in our economy and to harness advances in technology to benefit consumers directly.

The best way to achieve universal adoption of broadband is vigorous facilities-based competition among cable modem, wireline broadband, and alternative platforms, such as satellite and wireless. To achieve its goal of widely available, affordable, high-bandwidth broadband, HTBC has consistently supported a deregulatory environment that encourages investment in broadband facilities and regulatory parity among competing platforms. For example, in the Commission’s *Triennial Review* proceeding, HTBC explained that freeing incumbent local exchange carrier (“ILEC”) new last-mile broadband facilities from Section 251 unbundling obligations would spur investment in fiber loop facilities.⁴ Similarly, in the Cable Modem and Wireline Broadband proceedings, HTBC urged the Commission to establish parity and treat both cable modem and wireline broadband Internet access services as information services subject

⁴ See, e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers et al.*, Comments of High Tech Broadband Coalition, CC Docket Nos. 01-338, 96-98, 98-147 (filed Apr. 5, 2002).

only to minimal regulation in order to assure consumers continue to enjoy the benefits of an open Internet, as well as to encourage innovation, investment, and deployment.⁵

HTBC commends the Commission for taking action consistent with these recommendations in all of these critical decisions.⁶ As a result of the Commission's forward-thinking approach, we can expect continued acceleration in the deployment and use of broadband technologies and services. In fact, the first stage of the transition to universal broadband – from dial-up Internet access at narrowband speeds of approximately 56 Kbps to current broadband speeds averaging approximately 1.5 Mbps – is well underway. Broadband subscribership has increased by nearly a factor of 10, from 4.5 million in 2000 to 41.3 million in 2005.⁷ As of

⁵ See *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Comments of the High Tech Broadband Coalition, CC Docket No. 02-52 (filed June 17, 2002); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, Reply Comments of High Tech Broadband Coalition, CC Docket Nos. 02-33, 95-20, 98-10 (filed July 1, 2002). HTBC supports extending a deregulatory approach to municipal participation in broadband deployment. Although HTBC believes that the overwhelming majority of broadband deployment will come from private sector investment, HTBC supports a framework of open processes, while opposing state and federal laws that erect explicit or de facto barriers to municipal participation.

⁶ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers et al.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17142 (2003) (determining that ILECs need not unbundle FTTH loops in greenfield situations, broadband services over overbuild FTTH loops, the packetized portion of hybrid loops, and packet switching), *aff'd in part, remanded in part, vacated in part United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied* 125 S. Ct. 313, 316, 345 (2004); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271 (rel. Sept. 23, 2005) (classifying wireline broadband Internet access service as an information service); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities et al.*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) (concluding that cable modem service is an interstate information service, without a separate telecommunications service offering), *aff'd Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 125 S. Ct. 2688 (2005); *Policy Statement on Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.* in CC Docket Nos. 02-33, 01-337, 95-20, 98-10, GN Docket No. 00-185, CS Docket No. 02-52, FCC 05-151 (Aug. 5, 2005).

⁷ Wilkofsky Gruen Associates, *TIA's 2006 Telecommunications Market Review and Forecast*, at 59, Figure II-2.18 (2006).

August 2005, 42 percent of Americans reached the Internet at home via a broadband connection.⁸ While dial-up subscribership peaked at 47.0 million in 2002, it has since declined to about 38.7 million subscribers, the level that existed in 2000.⁹ Among the many benefits of broadband deployment, innovation has flourished with the introduction of new services for consumers and businesses, such as Voice over Internet Protocol (“VoIP”). Without the Commission’s actions, facilities providers would not feel nearly as confident in the profitability of their deployments, to the detriment of both consumers and industry.

ILECs and other competitors have begun to invest in deep fiber networks – again, encouraged by the Commission’s largely deregulatory actions. As of January 2006, fiber-to-the-premise (“FTTP”) facilities passed approximately 3.6 million homes, with 550,000 of those homes taking service.¹⁰ This represents a 10,000 percent increase in homes passed with FTTP and a 5,300 percent increase in homes served with FTTP since the Triennial Review Order was adopted. In addition to four different versions of FTTP, multiple xDSL standards, two versions of cable (DOCSIS 2x and DOCSIS 3.0), and multiple wireless and satellite technologies are also being developed. The next generation of broadband services supported by some of these investments will be characterized by a rapid increase in speed, from the current 1.5 Mbps to between 15 and 100 Mbps. These deployments are both risky and resource-intensive.

Therefore, widespread availability of next generation broadband requires the elimination

⁸ Press Release, Nielsen//NetRatings, *Two Out Of Every Five Americans Have Broadband Access At Home, According To Nielsen//Netratings* (Sept. 28, 2005), available at http://www.nielsen-netratings.com/pr/pr_050928.pdf.

⁹ *Supra*, note 7.

¹⁰ Render, Vanderslice & Associates, LLC, *FTTH/FTTP Update* (Feb. 2006).

wherever possible of barriers to entry, including the unreasonable burdens associated with the local video franchise process.

II. FURTHER COMMISSION ACTION IS NEEDED.

To justify the billions of dollars in investments needed to bring next-generation broadband to consumers, providers want to offer a “triple play” of voice, data, and video services. The extra revenue from the video component of these offerings is critical to support the cost of upgrading and expanding broadband networks.¹¹ For this reason, the Commission now has an opportunity to build on its past success by again pursuing a deregulatory agenda that promotes investment in the next generation of broadband. Obtaining local franchises to provide video services is a time-consuming process even under ideal circumstances. Each jurisdiction has its own requirements, procedures, and timeframes. If the local franchising process is allowed to impose unreasonable requirements on potential video providers, it will significantly delay or prevent carriers from building out new advanced networks and bringing additional competition to the video marketplace.

Section 621(a)(1) of the Act prohibits local franchising authorities from unreasonably refusing to grant a competitive franchise. Numerous commenters have stated that the Commission has the authority under Section 621(a)(1), Section 706, and other provisions of the Communications Act to interpret what constitutes such an unreasonable refusal.¹² HTBC urges

¹¹ See, e.g., *Implementation of Section 621(a)(1) of The Cable Communications Policy Act of 1934 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Comments of Alcatel, MB Docket No. 05-311, at 5-8 (filed Feb. 13, 2006).

¹² See, e.g., *id.* at 13-16; *Implementation of Section 621(a)(1) of The Cable Communications Policy Act of 1934 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Comments of Fiber-to-the-Home Council, MB Docket No. 05-311, at 40-46 (filed Feb. 13, 2006); *Implementation of Section 621(a)(1) of The Cable Communications Policy Act of 1934 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Comments of Telecommunications Industry Association, MB Docket No. 05-311, at 16-17 (filed Feb. 13, 2006); *Implementation of Section 621(a)(1) of The Cable Communications Policy Act of*

the Commission, consistent with its obligation under Section 706 to eliminate regulatory barriers to deployment of advanced services, to interpret “unreasonable refusal” as encompassing any actions or inactions that would delay, limit, or preclude investment in the broadband networks needed to provide competitive video services.

III. CONCLUSION

It is beyond question that the widespread deployment of affordable broadband facilities is a critical national priority. The Commission has consistently considered the recommendations of the high tech community and helped create a deregulatory environment that fosters investment and innovation. HTBC asks that the Commission take the next step in this process to further deployment of the next-generation of broadband networks and services.

1934 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Comments of Microsoft Corporation, MB Docket No. 05-311, at 7 (filed Feb. 13, 2006).

Respectfully submitted,

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APPENDIX

The six trade associations that comprise HTBC are:

- a. The **Business Software Alliance** (“BSA”) is an international organization representing leading software and e-commerce developers in 65 countries around the world.
- b. The **Consumer Electronics Association** (“CEA”) is the preeminent trade association promoting growth in the consumer technology industry through technology policy, events, research, promotion and the fostering of business and strategic relationships. CEA represents more than 2,000 corporate members involved in the design, development, manufacturing, distribution and integration of audio, video, mobile electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels. Combined, CEA’s members account for more than \$113 billion in annual sales.
- c. The **Information Technology Industry Council** (“ITI”) is an elite group of 31 of the world’s leading providers of information technology products and services, including computer, networking, data storage, communications, and Internet equipment, software, and services. ITI helps member companies achieve their policy objectives through building relationships with Members of Congress, Administration officials, and foreign governments; organizing industry-wide consensus on policy issues; and working to enact tech-friendly government policies.
- d. The **National Association of Manufacturers** (“NAM”) is the largest United States industrial trade association, with more than 12,000 members and 350 member associations in every industrial sector and all 50 States.
- e. The **Semiconductor Industry Association** (“SIA”) is the premier trade association representing the \$100 billion United States microchip industry. SIA member companies account for more than ninety percent of United States-based semiconductor production.
- f. The **Telecommunications Industry Association** (“TIA”) is the leading trade association serving the communications and information technology industry, with proven strengths in standards development, domestic and international public policy, and trade shows. Through its worldwide activities, TIA facilitates business development opportunities and a competitive market environment. The association also provides a forum for its over 600 member companies, the manufacturers and suppliers of products, and services used in global communications.