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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of the Complaint of
Umpqua Indian Development Corporation
(UIDC), Telecommunications Division, a
federally chartered corporation, dba RIO
COMMUNICATIONS, INC.,

Complainant,

vs.

PRIME TIME VENTURES LLC, dba,
INFOSTRUCTURE,

Respondent.

UM 1270

RESPONDENT’S OPENING
BRIEF ON SUBJECT MATTER
JURISDICTION

Defendant Prime Time Ventures, dba “InfoStructure” (hereinafter referred to as “Prime Time”) hereby submits its Opening Brief concerning the Oregon Public Utility Commission’s jurisdiction, if any, to resolve disputes regarding the provision of DSL services. For the reasons set forth below, Prime Time respectfully submits that the PUC does not have such jurisdiction and, accordingly, the Complaint filed by Umpqua Indian Development Corporation (hereinafter “Complainant”) must be dismissed.

ARGUMENT

The Complaint filed in this matter alleges that Prime Time engaged in “slamming” in violation of 47 USC § 258(a), which is administered by the PUC pursuant to 47 CFR § 64.1110 and ORS 759.730, when it allegedly “tampered with and disabled” Complainant’s DSL service to one of Complainant’s customers. The Complaint further requests that the PUC take action to prevent further violations by Prime Time of federal and state laws

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1 “governing telecommunications services”. In its prayer for relief, Complainant specifically
2 requests an order finding that Prime Time violated federal and Oregon anti-slamming laws,
3 and ordering Prime Time to desist from any further such violations.

4 Prime Time admits that the PUC has jurisdiction, pursuant to 47 CFR § 64.1110 and
5 ORS 759.730, to administer anti-slamming rules and remedies, including violations of 47
6 USC § 258(a). That statute prohibits the submission or execution of an unauthorized change
7 in a subscriber’s selection of a provider of telephone exchange service or telephone toll
8 service, commonly known as “slamming”, and provides, in part:

9 “No telecommunications carrier shall submit or execute a
10 change in a subscriber’s selection of a provider of telephone
11 exchange service or telephone toll service except in accordance
with such verification procedures as the [Federal
Communication Commission] shall prescribe.”

12 By its terms, however, 47 USC § 258(a) only applies to telecommunications services.¹
13 It does not apply to the provision of DSL services on which the Complaint is based. In fact,
14 the FCC has stated in a Report and Order and Notice of Proposed Rulemaking adopted on
15 August 5, 2005 and released on September 23, 2005 (FCC 05-150) that “wireline broadband
16 Internet access service provided over a provider’s own facilities is an information service”,
17 as opposed to a telecommunications service. *See* pp. 10-11 and 14-15 of Exhibit 1, attached
18 hereto.² As such, the FCC has determined that the provision of broadband internet service,
19 including DSL service, is outside the scope of the anti-slamming statutes. *Id.* Therefore,

21 ¹ Similarly, ORS 759.730 provides that the PUC may assume primary
22 responsibility for resolving consumer complaints relating to changes in a consumer’s
23 telecommunications carrier, in violation of federal laws, federal regulations or FCC
orders.

24 ² For convenience, FCC 05-150 is not reproduced in its entirety as part of Exhibit
25 1. Respondent has attached the introductory and background portion of that Order, set
26 forth as pages 1-14 of Exhibit 1, and has omitted pages 14-78 of the Order which are
inapplicable to the case at bar. Pages 79-80 of the Order, pertaining to “slamming” are
included as pages 14-15 of Exhibit 1.

1 although the PUC has jurisdiction under 47 CFR § 64.1110 and ORS 759.730 to regulate
2 “slamming” violations arising from the provision of telecommunications services, it has no
3 jurisdiction or authority to regulate any such disputes arising solely from the provision of
4 DSL service, including the allegations made by Complainant in this case.

5 There is also no specific authority, under applicable statutes or administrative rules,
6 granting the PUC jurisdiction over disputes arising out of the provision of DSL service. ORS
7 Chapter 759 pertains only to “telecommunications” regulation. Additionally, an
8 informational statement contained on the PUC’s website, describing the PUC’s jurisdiction
9 over various types of communications services, further affirms that the PUC has no
10 jurisdiction over data and information services. *See* Exhibit 2 attached hereto.

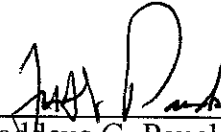
11 It is anticipated that Complainant may argue that the PUC has jurisdiction over
12 disputes involving the provision of DSL service simply because Prime Time is a competitive
13 local exchange carrier (“CLEC”) and the PUC has jurisdiction over CLECs. Any such
14 argument is misplaced because a CLEC may be involved in numerous activities apart from
15 the provision of telecommunications services over which the PUC has jurisdiction. If
16 Complainant’s argument, that the PUC has jurisdiction over any dispute among CLECs,
17 including disputes concerning activities distinct from the provision of telecommunications
18 services, were correct it would lead to the absurd result of the PUC having jurisdiction over
19 any activity carried on by the CLEC, no matter how remote that activity may be from the
20 provision of telecommunications services. Again, the PUC itself has declared that it does not
21 have jurisdiction over the provision of DSL service. Exhibit 2.

22 **CONCLUSION**

23 Because it is undisputed that the conduct complained of by Complainant arises solely
24 out of the provision of DSL services, which are not within the scope of federal and state anti-
25 slamming laws, including the statutes alleged by Complainant to have been violated in this
26 matter, and because there is no other independent authority granting the PUC jurisdiction

1 over the provision of DSL service, the PUC does not have subject matter jurisdiction over
2 this dispute. Accordingly, and for the reasons set forth above, the Complaint must be
3 dismissed. In addition, pursuant to ORS 759.900(1), Prime Time is entitled to an award of
4 its reasonable attorneys fees in defending against the Complaint filed herein.

5 RESPECTFULLY SUBMITTED this 13th day of October, 2006.

6
7 

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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)	
)	
Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services)	CC Docket No. 01-337
)	
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
)	
Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises)	WC Docket No. 04-242
)	
Consumer Protection in the Broadband Era)	WC Docket No. 05-271

**REPORT AND ORDER
AND
NOTICE OF PROPOSED RULEMAKING**

Adopted: August 5, 2005

Released: September 23, 2005

Comment Date: (90 Days After Federal Register Publication of this Notice)

Reply Comment Date: (135 Days After Federal Register Publication of this Notice)

By the Commission: Chairman Martin and Commissioner Abernathy issuing separate statements;
Commissioners Copps and Adelstein concurring and issuing separate statements.

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APPENDIX A – LIST OF COMMENTERS

APPENDIX B – REGULATORY FLEXIBILITY ANALYSES

I. INTRODUCTION

1. In this Order, we establish a new regulatory framework for broadband Internet access services offered by wireline facilities-based providers. Our actions today are essential to attaining the goals set forth in the *Wireline Broadband* proceeding,¹ and are reinforced by and consistent with the Supreme Court’s recent opinion in *NCTA v. Brand X*.² This framework establishes a minimal regulatory environment for wireline broadband Internet access services to benefit American consumers and promote innovative and efficient communications. First, this Order encourages the ubiquitous availability of broadband to all Americans by, among other things, removing outdated regulations. Those regulations were created over the past three decades under technological and market conditions that differed greatly from those of today. Second, the framework we adopt in this Order furthers the goal of developing a consistent regulatory framework across platforms by regulating like services in a similar functional manner, after a transitional period. Finally, the actions we take in this Order allow facilities-based wireline broadband Internet access service providers to respond to changing marketplace demands effectively and efficiently, spurring them to invest in and deploy innovative broadband capabilities that can benefit all Americans, consistent with the Communications Act of 1934, as amended (the Communications Act or Act).

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (*Wireline Broadband NPRM*).

² *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 125 S. Ct. 2688 (2005) (*NCTA v. Brand X*), *aff’g Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185 & CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) (*Cable Modem Declaratory Ruling and NPRM*).

Federal Communications Commission

FCC 05-150

2. In this Order we reach a classification determination that is consistent with our decision in the *Cable Modem* proceeding, as affirmed by the Supreme Court. Unlike the *Cable Modem Declaratory Ruling*,³ however, which addressed a service and its transmission component that had not previously been classified under the Act or subjected to any network access requirements, because facilities-based providers of wireline broadband Internet access service are subject to legacy regulation,⁴ we must consider that legacy regulation in determining the appropriate regulatory framework for wireline broadband Internet access service providers.

3. Today, we decide that the appropriate framework for wireline broadband Internet access service, including its transmission component, is one that is eligible for a lighter regulatory touch.⁵ In the past, the primary, if not sole, facilities-based platform available for the provision of “information services” to consumers was an incumbent local exchange carrier’s (incumbent LEC’s) telephone network.⁶ By contrast, the record before us demonstrates that the broadband Internet access market today is characterized by several emerging platforms and providers, both intermodal and intramodal, in most areas of the country.⁷ We are confident that the regulatory regime we adopt in this Order will promote the availability of competitive broadband Internet access services to consumers, via multiple platforms, while ensuring adequate incentives are in place to encourage the deployment and innovation of broadband platforms consistent with our obligations and mandates under the Act.⁸

³ *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4799-839, paras. 1-71.

⁴ As the Supreme Court recently observed, the Commission has never applied its legacy-based network access regime to information services provided over cable facilities. *NCTA v. Brand X*, slip op. at 30; see *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4825, para. 43.

⁵ Throughout this Order, we refer to the transmission underlying wireline broadband Internet access service as the “transmission component.” We note that commenters use various terms to refer to this transmission component. See, e.g., AT&T Comments at 17 (“standalone broadband transmission services”); Covad Comments at 65-66 (“telecommunications component”); BellSouth Reply at 12 (same).

⁶ See *NCTA v. Brand X*, slip op. at 30. This network was optimized for narrowband voice and data applications, not high-speed Internet access capabilities that were not yet even commercially contemplated. See *Wireline Broadband NPRM*, 17 FCC Rcd at 3037, para. 136.

⁷ E.g., Alcatel Comments at 2-3; BellSouth Comments at 15-18; Qwest Comments at 26; SBC Comments at 20-24; Verizon Comments at 15; see also *NCTA v. Brand X*, slip op. at 2-3. We refer to “intramodal competitors” as those competitive providers, such as Covad, whose services are either delivered partially or wholly over incumbent LEC facilities, or over wireline platforms using technology identical or similar to those which incumbent LECs have deployed. “Intermodal competitors” are providers of services similar to those provided by incumbent LECs that rely exclusively on technological platforms other than wireline technologies. As we discuss in part V.B.1, below, intermodal competitors include, for example, cable modem service providers, wireless broadband Internet access service providers, satellite broadband Internet access service providers, and other broadband Internet access service providers such as broadband over power line providers. *Availability of Advanced Telecommunications Capability in the United States*, GN Docket No. 04-54, Fourth Report to Congress, FCC 04-208, at 18-23, 45 (rel. Sept. 9, 2004) (*Fourth Section 706 Report*) (describing wireless, satellite, and power line platforms). Twice a year, the Commission releases *High-Speed Services* reports that summarize the results of its Form 477 data collection under which all facilities-based providers of high-speed telecommunications capability must provide information regarding their operations. See, e.g., Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access as of December 31, 2004*, at Table 3, Chart 6 (rel. July 7, 2005) (*High-Speed Services July 2005 Report*).

⁸ Specifically, Congress enacted the Telecommunications Act of 1996 (1996 Act) for the express purposes of promoting competition, reducing regulation, and encouraging the rapid deployment of new telecommunications (continued . . .)

4. In part II, below, we summarize the major actions we take in this Order. In part III, we provide important background information and define the scope of this Order. Then in part IV, we classify wireline broadband Internet access service as an information service under the statute. In part V, we develop our new regulatory framework for broadband Internet access services offered by wireline facilities-based providers. We begin this part by describing the current regulatory framework under the *Computer Inquiry* regime⁹ and the technological attributes associated with broadband Internet access services that are relevant to our decision-making process. Next, we consider the appropriateness of maintaining the current access and related requirements that apply to facilities-based wireline broadband Internet access service providers under the *Computer Inquiry* rules. We conclude that continued application of the *Computer Inquiry* requirements is not appropriate, and we adopt a new framework for wireline broadband Internet access service providers. We then determine that, given this new framework, the transmission component of wireline broadband Internet access is not a telecommunications service. In part VI, we analyze the effect of our classification findings on universal service, national security, and other important consumer interests. Finally, consistent with our objective to create a broadband regulatory regime that is technology and competitively neutral, we adopt a Notice of Proposed

(continued from previous page)

technologies. See Preamble, Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (Preamble to 1996 Act). In section 706 of the 1996 Act, Congress directed the Commission to encourage, without regard to transmission media or technology, the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis through, among other things, removing barriers to infrastructure investment. Section 706 is reproduced in the notes to section 157 of the Act. See 47 U.S.C. § 157 nt.

⁹ See *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384 (1980) (*Computer II Final Decision*), *recon.*, 84 FCC 2d 50 (1980) (*Computer II Reconsideration Order*), *further recon.*, 88 FCC 2d 512 (1981) (*Computer II Further Reconsideration Order*), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) (*CCIA v. FCC*), *cert. denied*, 461 U.S. 938 (1983) (collectively referred to as *Computer II*); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Computer III Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Computer III Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Computer III Phase I Second Further Reconsideration Order*); *Phase I Order and Phase I Recon. Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Computer III Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*), *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 6040 (1998) (*Computer III Further Remand Further Notice*); Report and Order, 14 FCC Rcd 4289 (1999) (*Computer III Further Remand Order*), *recon.*, 14 FCC Rcd 21628 (1999) (*Computer III Further Remand Reconsideration Order*); see also *Further Comment Requested to Update and Refresh Record on Computer III Requirements*, CC Dockets Nos. 95-20 & 98-10, Public Notice, 16 FCC Rcd 5363 (2001) (asking whether, under the open network architecture (ONA) framework, information service providers can obtain the telecommunications inputs, including digital subscriber line (DSL) service, they require) (collectively referred to as *Computer III*). Together with *Computer I*, see *infra* note 49, *Computer II* and *Computer III* are referred to as the *Computer Inquiries*.

Rulemaking seeking comment on the need for any non-economic regulatory requirements necessary to ensure that consumer protection needs are met by all providers of broadband Internet access service, regardless of the underlying technology.

II. EXECUTIVE SUMMARY

5. In accordance with our responsibilities under the Act, and in light of the competitive and technical characteristics of the broadband Internet access market today, we take the following actions to establish a comprehensive regulatory framework for facilities-based providers of wireline broadband Internet access service:

- Consistent with the Supreme Court's opinion in *NCTA v. Brand X*, we determine that facilities-based wireline broadband Internet access service is an information service.
- Facilities-based wireline broadband Internet access service providers are no longer required to separate out and offer the wireline broadband transmission component (*i.e.*, transmission in excess of 200 kilobits per second (kbps) in at least one direction) of wireline broadband Internet access services as a stand-alone telecommunications service under Title II, subject to the transition explained below. In addition, the Bell Operating Companies (BOCs) are immediately relieved of all other *Computer Inquiry* requirements with respect to wireline broadband Internet access services.
- Facilities-based wireline carriers are permitted to offer broadband Internet access transmission arrangements for wireline broadband Internet access services on a common carrier basis or a non-common carrier basis.
- Facilities-based wireline Internet access service providers must continue to provide existing wireline broadband Internet access transmission offerings, on a grandfathered basis, to unaffiliated ISPs for a one-year transition period.
- We affirm that neither the statute nor relevant precedent mandates that broadband transmission be a telecommunications service when provided to an ISP, but the provider may choose to offer it as such. We determine that the use of the transmission component as part of a facilities-based provider's offering of wireline broadband Internet access service to end users using its own transmission facilities is "telecommunications" and not a "telecommunication service" under the Act.

6. We also address other important areas relating to the provision of broadband Internet access services including:

- We maintain the *status quo* for universal service during for a 270-day period pending resolution of the *USF Contribution Methodology* proceeding.
- We ensure no adverse impact on public safety through the continued requirement that voice over IP (VoIP) providers using wireline broadband Internet access facilities comply with E911 obligations.
- We confirm that this Order does not affect disability access obligations the Commission has adopted pursuant to its Title I ancillary jurisdiction, and we will continue to exercise our Title

I authority, as necessary, to give full effect to the accessibility policy embodied in section 255.

- Nothing in this Order changes requesting telecommunications carriers' rights to access unbundled network elements (UNEs) under section 251 and our related implementing rules.

7. Finally, we adopt a Notice of Proposed Rulemaking seeking comment on the need for any non-economic regulatory requirements necessary to ensure that consumer protection needs are met by all providers of broadband Internet access service, regardless of the underlying technology.

III. BACKGROUND AND SCOPE

8. As the Supreme Court held in *NCTA v. Brand X*, the Communications Act does not address directly how broadband Internet access service should be classified or regulated.¹⁰ The Act does, however, provide the Commission express directives with respect to encouraging broadband deployment, generally, and promoting and preserving a freely competitive Internet market, specifically.¹¹ Consequently, the Commission initiated the *Wireline Broadband* proceeding to answer important questions about the appropriate legal and policy framework for wireline broadband Internet access service in furtherance of its obligations under the Act. In undertaking this review, the Commission recognized the differing market and technical characteristics unique to broadband Internet access services.¹² To that end, the *Wireline Broadband NPRM* sought detailed comment on the appropriate regulatory framework for wireline broadband Internet access service.¹³ Since commencing this proceeding, the Commission has taken a number of important actions regarding broadband facilities and services.¹⁴

¹⁰ *NCTA v. Brand X*, slip op. at 17-25; see *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4819, para. 32.

¹¹ See *supra* n.8; cf. *United States Telecom Association v. FCC*, 359 F.3d 554, 580-82 (D.C. Cir. 2004) (*USTA II*), cert. denied, 125 S. Ct. 313, 316, 345 (2004) (holding that the Commission reasonably interpreted section 251(c)(3) of the Act as allowing it to withhold unbundling, even in the face of some impairment, where such unbundling would pose excessive impediments to infrastructure investment).

¹² *Wireline Broadband NPRM*, 17 FCC Rcd at 3027, para. 13.

¹³ *Id.* at 3040-43, paras. 43-53.

¹⁴ See, e.g., *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 Nos. 01-338, 03-235, 03-260, 04-48, Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004) (*Broadband 271 Forbearance Order*); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration, 19 FCC Rcd 20293 (2004) (*Fiber to the Curb Reconsideration Order*); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration, 19 FCC Rcd 15856 (2004) (*Multiple Dwelling Unit Reconsideration Order*); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17141-53, paras. 272-95, & 17323, para. 541 2003 (*Triennial Review Order*), *aff'd in part, remanded in part, vacated in part, USTA II*, 359 F.3d at 564-93.

9. Wireline broadband Internet access service, for purposes of this proceeding, is a service that uses existing or future wireline facilities of the telephone network to provide subscribers with Internet access capabilities.¹⁵ The term “Internet access service” refers to a service that always and necessarily combines computer processing, information provision, and computer interactivity with data transport, enabling end users to run a variety of applications such as e-mail, and access web pages and newsgroups.¹⁶ Wireline broadband Internet access service, like cable modem service, is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission such that the consumer always uses them as a unitary service.¹⁷ For example, as we explained in the *Wireline Broadband NPRM*, where wireline broadband Internet access service enables an end user to retrieve files from the World Wide Web, the end user has the capability to interact with information stored on the service provider’s facilities.¹⁸ To the extent a provider offers end users a capability to store files on the service provider’s computers to establish “home pages,” the consumer is utilizing the “capability for . . . storing . . . or making available information.”¹⁹ In short, providers of wireline broadband Internet access service offer subscribers the ability to run a variety of applications that fit under the characteristics stated in the information service definition.²⁰ These characteristics distinguish wireline broadband Internet access service from other wireline broadband services, such as stand-alone ATM service, frame relay,

¹⁵ We stress that our actions in this Order are limited to wireline broadband Internet access service and its underlying broadband transmission component, whether that component is provided over all copper loops, hybrid copper-fiber loops, a fiber-to-the-curb or fiber-to-the-premises (FTTP) network, or any other type of wireline facilities, and whether that component is provided using circuit-switched, packet-based, or any other technology. See *Wireline Broadband NPRM*, 17 FCC Rcd at 3020 n.1 & 3026, para. 12. As noted in the *Wireline Broadband NPRM*, some service providers deploying DSL and other wireline broadband technologies may utilize asynchronous transfer mode (ATM) or frame relay transport in their networks. See *Wireline Broadband NPRM*, 17 FCC Rcd at 3026 n.19. The use of ATM or frame relay transport in this context neither expands nor limits the scope of relief, which covers all wireline broadband Internet access services as discussed further below. This Order *does not* implicate the current rules or regulatory framework for the provision of access to narrowband transmission associated with dial-up Internet access services or other narrowband or broadband information services when provided by facilities-based wireline carriers. See *Wireline Broadband NPRM*, 17 FCC Rcd at 3025 n.18. For purposes of this proceeding, we define the line between broadband and narrowband consistent with the Commission’s definition in other contexts (i.e., services with over 200 kbps capability in at least one direction). See, e.g., *Fourth Section 706 Report*, at 8, 10; *Local Telephone Competition and Broadband Reporting*, CC Docket No. 04-141, Report and Order, 19 FCC Rcd 22340, 22342, para. 3 (2004) (*Form 477 Data Collection Order*); *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM 10865, Notice of Proposed Rulemaking and Declaratory Ruling, 19 FCC Rcd 15676, 15692, para. 35 (2004) (*CALEA NPRM*). Although this definition remains in effect today, the Commission has indicated that it may examine the definition and modify it for future purposes. See *Form 477 Data Collection Order*, 19 FCC Rcd at 22347-48, para. 14.

¹⁶ See *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4821, para. 36; *Wireline Broadband NPRM*, 17 FCC Rcd at 3027 n.27 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11516-17, para. 33 (1998) (*Report to Congress*) (Internet access services are services that “alter the format of information through computer processing applications such as protocol conversion and interaction with stored data.”)); see also 47 U.S.C. § 231(e)(4); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 851 (1997).

¹⁷ *NCTA v. Brand X*, slip op. at 6 (citing *Cable Modem Declaratory Ruling*, 19 FCC Rcd at 4823, para. 38) & 18-19. That is, the transmission component of wireline broadband Internet access service is “‘part and parcel’ of [that service] and is integral to [that service’s] other capabilities.” *NCTA v. Brand X*, slip op. at 26 (quoting *Cable Modem Declaratory Ruling*, 19 FCC Rcd at 4823, para. 39).

¹⁸ *Wireline Broadband NPRM*, 17 FCC Rcd at 3031, para. 21.

¹⁹ *Id.*

²⁰ *Id.* at 3030, para. 20.

gigabit Ethernet service, and other high-capacity special access services, that carriers and end users have traditionally used for basic transmission purposes.²¹ That is, these services lack the key characteristics of wireline broadband Internet access service – they do not inextricably intertwine transmission with information-processing capabilities.²² Because carriers and end users typically use these services for basic transmission purposes, these services are telecommunications services under the statutory definitions.²³ These broadband telecommunications services remain subject to current Title II requirements.²⁴

10. In the *Wireline Broadband NPRM*, the Commission tentatively concluded that wireline broadband Internet access service is an information service when provided over an entity's own facilities, and that the underlying transmission component of such service constituted "telecommunications" and not a "telecommunications service" under the Act.²⁵ The Commission invited comment on these tentative conclusions and its prior conclusion that "an entity is providing a 'telecommunications service' to the extent that such entity provides only broadband transmission service on a stand-alone basis, without a broadband Internet Access service."²⁶ Finally, the Commission sought comment on the extent to which any actions it might take in this proceeding would affect other regulatory obligations.²⁷

11. In addressing the issues before us, we draw from the records of several proceedings, including the *Wireline Broadband* proceeding, where the Commission invited comment on technological and market-related issues pertaining to wireline broadband Internet access services,²⁸ and the *Incumbent LEC Broadband* proceeding, where the Commission invited comment on technological and market-related issues relating to our tariffing rules for incumbent LECs' broadband telecommunications services.²⁹

²¹ See Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Their Broadband Services, WC Docket No. 04-440, at 11-12 (filed Dec. 20, 2004). Similarly, this Order does not disturb incumbent LECs' unbundled network element (UNE) obligations or competitive carriers' rights to obtain UNEs. See *infra* Part VI.E.

²² *NCTA v. Brand X*, slip op. at 26.

²³ See 47 U.S.C. § 153(43), (46); *NCTA v. Brand X*, slip op. at 26-27.

²⁴ We note that the Commission is currently considering changes to this framework in a number of related proceedings. See, e.g., *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) (*Incumbent LEC Broadband NPRM*); *Computer III Further Remand Further Notice*, 13 FCC Rcd at 6046, para. 6 (inviting comment on whether the Commission should eliminate the ONA, CEI, and other *Computer III* requirements); *Special Access Rates for Price Cap Local Exchange Carriers*; *AT&T Corp. Petition for Rulemaking to Reform of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, FCC 05-18 (rel. Jan. 31, 2005) (*Special Access NPRM*); see also *supra* note 15.

²⁵ *Wireline Broadband NPRM*, 17 FCC Rcd at 3032-33, paras. 24-25.

²⁶ *Id.* at 3033, para. 26 n.60 (citations omitted).

²⁷ *Id.* at 3043-47, paras. 54-61, & 3048-52, paras. 65-74.

²⁸ *Id.* at 3040-41, paras. 43-44; see *id.* at 3043-47, paras. 54-61, & 3048-52, paras. 65-74 (inviting comment on what effect classifying wireline broadband Internet access service as an information service would have on regulatory obligations other than those under the Commission's *Computer Inquiry* rules).

²⁹ *Incumbent LEC Broadband NPRM*, 16 FCC Rcd at 22748, para. 7. We also include the *Computer III Remand* proceeding to the extent it addresses wireline broadband Internet access service as well as the *Verizon Fiber-to-the-Premises* proceedings. See, e.g., *Computer III Further Remand Further Notice*, 13 FCC Rcd at 6040; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband* (continued . . .)

Consistent with the scope of the *Wireline Broadband* proceeding, we restrict our decisions in this Order to only wireline broadband Internet access services and those wireline broadband technologies that have been utilized for such Internet access services.³⁰

IV. CLASSIFICATION OF WIRELINE BROADBAND INTERNET ACCESS SERVICE

12. In this section, we affirm our tentative conclusion “that wireline broadband Internet access service provided over a provider’s own facilities is an information service.”³¹ This classification is consistent both with the Commission’s classification of cable modem service, as affirmed by the Supreme Court in *Brand X*, and with the Commission’s earlier determination in its *Report to Congress* that Internet access service is an information service.³²

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Services Provided Via Fiber to the Premises, WC Docket No. 04-242 (filed June 28, 2004) (*Verizon Fiber-to-the-Premises Forbearance Petition*); *Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242 (filed June 28, 2004) (*Verizon Fiber-to-the-Premises Declaratory Ruling and Waiver Petition*). For clarity, we include the docket number in references to documents filed in proceedings other than the *Wireline Broadband* proceeding.

³⁰ See *supra* note 15. To be clear, this Order does not address classification issues of broadband Internet access services provided over cable, wireless (satellite, mobile, or fixed wireless), or power line (electric grid) networks. We will address, where appropriate, any regulatory treatment and other issues associated with such alternative platforms in separate proceedings in a manner not inconsistent with the analysis and conclusions in this Order. See, e.g., *Amendment of Part 15 Regarding New Requirements And Measurement Guidelines For Access Broadband Over Power Line Systems*, Report and Order, ET Docket No. 04-37, 19 FCC Rcd 21265 (2004); *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4839-54, paras. 72-112 (notice of proposed rulemaking); see also *infra* Part VIII (initiating a rulemaking on consumer protection in the broadband era).

³¹ See *Wireline Broadband NPRM*, 17 FCC Rcd at 3032-33, para. 24. As discussed more fully below, we disagree with those commenters that argue that wireline broadband Internet access service necessarily includes both an information service and a telecommunications service. See, e.g., California Commission Comments at 10-14 (wireline broadband Internet access is in part a telecommunications service); Ohio Commission Comments at 14-15 (same); Illinois Commission Comments at 10 (distinct telecommunications service and information service); New York Commission Comments at 3-4 (same); Allegiance Reply at 28 (wireline broadband Internet access service involves both information service and telecommunications service); NRTA Reply at 2 (same). Those arguments are premised on an assumption, which this Order fundamentally alters, that the carrier continues to be under a Commission-imposed compulsion to offer the transmission underlying that service as a telecommunications service. See, e.g., California Commission Comments at 13-14; Illinois Commission Comments at 9-11; New York Commission Comments at 4.

³² See *NCTA v. Brand X*, slip op. at 13-14; *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4820-24, paras. 34-41; *Report to Congress*, 13 FCC Rcd at 11511, para. 21 (finding that “Congress intended to maintain a regime in which information service providers are not subject to regulation as common carriers merely because they provide their services ‘via telecommunications’”); see also 47 U.S.C. § 231(e)(4) (excluding “telecommunications services” from the definition of “Internet access service”). Although the Commission has not been entirely consistent on this point, we agree for the wireline broadband Internet access described in this Order with the past Commission pronouncements that the categories of “information service” and “telecommunications service” are mutually exclusive. Compare *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4823, paras. 39-40, & *Report to Congress*, 13 FCC Rcd at 11516-26, paras. 33-48, & 11530, para. 59 with *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012, 24029, paras. 35-37 (1998) (*Advanced Services Order and NPRM*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Remand, 15 (continued . . .)

13. The Act defines “information service” as

the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.³³

The Act also defines “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, regardless of the facilities used”³⁴ and “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”³⁵

14. Applying the definitions of “information service,” “telecommunications,” and “telecommunications service,” we conclude that wireline broadband Internet access service provided over a provider’s own facilities is appropriately classified as an information service because its providers offer a single, integrated service (*i.e.*, Internet access) to end users.³⁶ That is, like cable modem service (which is usually provided over the provider’s own facilities), wireline broadband Internet access service combines computer processing, information provision, and computer interactivity with data transport, enabling end users to run a variety of applications (*e.g.*, e-mail, web pages, and newsgroups).³⁷ These applications encompass the capability for “generating, acquiring, storing, transforming, processing,

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FCC Rcd 385, 394-95, para. 21 (1999) (*Advanced Services Order on Remand*); *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, Second Report and Order, 15 FCC Rcd 7105, 7120, para. 27 (1999) (*CALEA Second Report and Order*); *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61 & 98-183, Report and Order, 16 FCC Rcd 7418, 7447, paras. 49-50 (2001) (*CPE Bundling Order*); *see also* BellSouth Reply at 11; Covad Comments at 66; Qwest Comments at 8; Verizon Comments at 8. *But see* Allegiance Comments at 11-12 (arguing wireline broadband Internet access “bundle[s]” an information service and a telecommunications service).

³³ 47 U.S.C. § 153(20).

³⁴ 47 U.S.C. § 153(46).

³⁵ 47 U.S.C. § 153(43).

³⁶ Indeed, in *Brand X*, quoting from the *Report to Congress*, the Supreme Court stated that, from an end user’s perspective, cable modem service does not provide a transparent ability to transmit information. *See NCTA v. Brand X*, slip op. at 26-29; *see also Report to Congress*, 13 FCC Rcd at 11529, para. 58 (stating that “[a]n offering that constitutes a single service from the end user’s standpoint is not subject to common carrier regulation simply by virtue of the fact that it involves telecommunications components”).

³⁷ *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4822, para. 38 (concluding that cable modem service combines “the transmission of data with computer processing, information provision, and computer interactivity, enabling end users to run a variety of applications,” and is therefore an information service); *see also Report to Congress*, 13 FCC Rcd at 11536, para. 73.

retrieving, utilizing, or making available information via telecommunications,” and taken together constitute an information service as defined by the Act.³⁸

15. The capabilities of wireline broadband Internet access service demonstrate that this service, like cable modem service, provides end users more than pure transmission, “between or among points selected by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”³⁹ Because wireline broadband Internet access service inextricably combines the offering of powerful computer capabilities with telecommunications, we conclude that it falls within the class of services identified in the Act as “information services.”⁴⁰ The information service classification applies regardless of whether subscribers use all of the functions and capabilities provided as part of the service (e.g., e-mail or web-hosting), and whether every wireline broadband Internet access service provider offers each function and capability that could be included in that service.⁴¹ Indeed, as with cable modem service, an end user of wireline broadband Internet access service cannot reach a third party’s web site without access to the Domain Naming Service (DNS) capability “which (among other things) matches the Web site address the end user types into his browser (or ‘clicks’ on with his mouse) with the IP address of the Web page’s host server.”⁴² The end user therefore receives more than transparent transmission whenever he or she accesses the Internet.

16. There is no reason to classify wireline broadband Internet access services differently depending on who owns the transmission facilities.⁴³ From the end user’s perspective, an information service is being offered regardless of whether a wireline broadband Internet access service provider self-provides the transmission component or provides the service over transmission facilities that it does not own. As the Commission indicated in its *Report to Congress*, what matters is the finished product made available through a service rather than the facilities used to provide it.⁴⁴ The end user of wireline broadband Internet access service receives an integrated package of transmission and information processing capabilities from the provider, and the identity of the owner of the transmission facilities does not affect

³⁸ *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4823-24, para. 41. In contrast, to the extent a service does not provide these capabilities, but merely provides transmission whether narrowband or broadband, it would not be an information service. See *supra* para. 9 (explaining the difference between wireline broadband Internet access service and other wireline broadband transmission services).

³⁹ 47 U.S.C. § 153(43) (defining “telecommunications”); cf. *NCTA v. Brand X*, slip op. at 27 (finding reasonable the Commission’s conclusion that an end user of cable modem service “is equally using the information service provided by the cable company as when he accesses the company’s own Web site, its e-mail service, or his personal Web page”); see also *supra* note 36.

⁴⁰ *Wireline Broadband NPRM*, 17 FCC Rcd at 3027, para. 13.

⁴¹ *Cable Modem Declaratory Ruling*, at para. 38. This classification appears consistent with Congress’s understanding of the nature of Internet access services. Specifically, in section 230(f)(2) of the Act, Congress defined the term “interactive computer service” to mean “any information service, . . . including specifically a service or system that provides access to the Internet” 47 U.S.C. § 230(f)(2) (emphasis added).

⁴² *NCTA v. Brand X*, slip op. at 27 (citation omitted).

⁴³ See *Wireline Broadband NPRM*, 17 FCC Rcd at 3027-28, para. 14 (citing *Report to Congress*, 13 FCC Rcd at 11534, para. 69) (concluding that non-facilities-based ISPs are information service providers).

⁴⁴ *Report to Congress*, 13 FCC Rcd at 11530, para. 59 (noting “Congress’s direction that the classification of a provider should not depend on the type of facilities used . . . [but] rather on the nature of the service being offered to customers”); see also *Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4821, para. 35; *Wireline Broadband NPRM*, 17 FCC Rcd at 3032-33, paras. 24-25, & 3052-53, para. 75.

the nature of the service to the end user.⁴⁵ Thus, in addition to affirming our tentative conclusion above “that wireline broadband Internet access service provided over a provider’s own facilities is an information service,”⁴⁶ we also make clear that wireline broadband Internet access service is an information service when the provider of the retail service does not provide the service over its own transmission facilities.

17. Not only is the classification of wireline broadband Internet access service as an information service consistent with *Brand X*, but this classification, in our view, best facilitates the goals of the Act, including promoting the ubiquitous availability of broadband Internet access services to all Americans. Moreover, by classifying both wireline broadband Internet access service and cable modem service as information services, and by adopting the attached NPRM, we move closer to crafting an analytical framework that is consistent, to the extent possible, across multiple platforms that support competing services.⁴⁷

V. REGULATION OF WIRELINE BROADBAND INTERNET ACCESS SERVICE PROVIDERS

18. The broadband Internet access services marketplace is vastly different from the marketplace of over three decades ago when access requirements to the transmission underlying wireline-based information services were first developed and the relative cost/benefit analysis rendered a different result.⁴⁸ We base our decision to eliminate these requirements on a number of factors.

19. First, broadband Internet access services in most parts of the country are offered by two established platform providers, which continue to expand rapidly, and by several existing and emerging platforms and providers, intermodal and intramodal alike. Second, the record shows that the existing regulations constrain technological advances and deter broadband infrastructure investment by creating disincentives to the deployment of facilities capable of providing innovative broadband Internet access services. Third, fast-paced technological changes and new consumer demands are causing a rapid evolution in the marketplace for these services. Wireline broadband carriers are constrained in their ability to respond to these changes in an efficient, effective, or timely manner as a result of the limitations imposed by these regulations. Fourth, the marketplace should create incentives for facilities-based wireline broadband providers to make broadband transmission available on a wholesale basis without these requirements. Finally, the directives of section 706 of the 1996 Act require that we ensure that our broadband policies promote infrastructure investment, consistent with our other obligations under the Act.

20. To provide a context for our decisions, we briefly describe the history of the *Computer Inquiry* regime and summarize its purposes and basic requirements. We explain how these requirements currently apply to facilities-based wireline broadband Internet access providers, and why these rules should no longer apply. Finally, we describe how our new framework will further the nation’s broadband objectives.

⁴⁵ See, e.g., *NCTA v. Brand X*, slip op. at 24-25 (recognizing that the statutory definitions do not distinguish between facilities-based ISPs and other ISPs); see also Qwest Comments at 6-8; SBC Comments at 16-18; Verizon Reply at 6-7.

⁴⁶ See *supra* para. 12; *Wireline Broadband NPRM*, 17 FCC Rcd at 3032-33, para. 24.

⁴⁷ See *Wireline Broadband NPRM*, 17 FCC Rcd at 3021-23, paras. 3-7.

⁴⁸ See *NCTA v. Brand X*, slip op. at 30.

customers' approval, information about their customers that they learn through the provision of their broadband Internet access service? We seek comment on what sort of customer proprietary information broadband Internet access providers possess, e.g., information about consumers' service plans, installed equipment, or patterns of Internet access use. We note that long before Congress enacted section 222 of the Act, the Commission had recognized the need for privacy requirements associated with the provision of enhanced services and had adopted CPNI-related requirements in conjunction with other *Computer Inquiry* obligations.⁴⁴⁷

B. Slamming

150. Section 258 of the Act prohibits telecommunications carriers from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, a practice commonly known as "slamming."⁴⁴⁸ In a series of orders, the Commission adopted various rules to implement section 258, and concluded that state authorities should have primary responsibility for administering the rules.⁴⁴⁹ By providing for state administration of slamming rules, the

⁴⁴⁷ See *Computer III Phase II Order*, 2 FCC Rcd at 3094-95, paras. 152-56 (1987). Specifically, in the *Computer III* proceeding, the Commission adopted a framework governing CPNI not only to protect independent enhanced service providers from anticompetitive use of customers' local and long distance services information gained by the dominant telephone service providers to advance their enhanced services provisioning, but also to protect legitimate customer expectations of confidentiality. Under the pre-1996 Act CPNI framework, which was eliminated in its entirety when the Commission implemented section 222, customer information derived from the provision of enhanced services was not subject to CPNI protections. See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8184-93, paras. 176-89 (1998) (*CPNI Order*), on recon., 14 FCC Rcd 14409 (1999) (*CPNI Reconsideration Order*), vacated sub nom. *U.S. West v. FCC*, 182 F.3d 1224 (10th Cir. 1999), cert. denied, 530 U.S. 1213 (2000).

⁴⁴⁸ 47 U.S.C. § 258(a) (mandating that "[n]o telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe"). Prior to the adoption of section 258 of the Act, the Commission had recognized that slamming was a significant problem, and had taken various steps to address the issue; the adoption of section 258 expanded the Commission's authority in this area. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, Report and Order, 7 FCC Rcd 1038 (1992), recon. denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, Memorandum Opinion and Order, 101 FCC 2d 935, recon., 102 FCC 2d 503 (1985); see also, e.g., *Cherry Communications*, File No. ENF-93-045, Order, 9 FCC Rcd 2086 (1994) (adopting consent decree enforcing the Commission's anti-slamming rules).

⁴⁴⁹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (*Second Report and Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999) (*Stay Order*), motion to dissolve stay granted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000) (*Order Lifting Stay*); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, First Order on Reconsideration, 15 FCC Rcd 8158 (2000) (*First Reconsideration Order*); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000) (*Third Report and Order*); Errata, DA 00-2163 (rel. Sept. 25, 2000); Erratum, DA 00-292 (rel. Oct. 4, 2000); *Implementation of the* (continued . . .)

Commission recognized that state authorities are particularly well-equipped to handle such complaints because states are close to consumers and are familiar with trends in their regions.⁴⁵⁰ The Commission also recognized, however, that all states may not have the resources available to handle slamming complaints.⁴⁵¹ Accordingly, the Commission's rules allow consumers in states that do not "opt-in" to administer the slamming rules to file slamming complaints with the Commission.⁴⁵²

151. We seek comment on whether we should exercise our Title I authority to impose similar requirements on providers of broadband Internet access service. Commenters should explain in what circumstances subscribers to broadband Internet access could get "slammed."⁴⁵³ Is the provisioning process for broadband Internet access service such that an unauthorized change in provider is more likely in situations where the provider relies on third-party broadband transmission facilities?

C. Truth-in-Billing

152. The Commission has adopted truth-in-billing rules to ensure that consumers receive accurate, meaningful information on their telecommunications bills that will allow consumers to better understand their bills, compare service offerings, and thereby promote a more efficient, competitive marketplace.⁴⁵⁴ In general, the Commission's rules require that a telecommunication carrier's bill must: (1) be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered; (2) identify the service provider associated with each charge; (3) clearly and conspicuously identify any change in service provider; (4) identify those charges for which failure to pay will not result in disconnection of basic local service; and (5) provide a toll-free number for consumers to inquire or dispute any charges.⁴⁵⁵ The Commission's rules on truth-in-billing are designed to reduce slamming,⁴⁵⁶

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Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Order, 16 FCC Rcd 4999 (2001); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003) (*Third Reconsideration Order* and/or *Second FNPRM*). The rules adopted by the Commission to implement section 258 are codified in part 64. See 47 C.F.R. §§ 64.1100 *et seq.*

⁴⁵⁰ *First Reconsideration Order*, 15 FCC Rcd at 8169-80, paras. 22-43.

⁴⁵¹ *Id.* at 8165-66, paras. 25-28.



⁴⁵² *Id.*

⁴⁵³ Typically, in order to subscribe to broadband Internet access service, a consumer must install, or have installed, equipment (*i.e.*, a modem that the ISP provides to the consumer and that is specific to that ISP) that, along with a proprietary password, enables the consumer to utilize that particular ISP's Internet access service. We therefore seek comment on whether, given the manner in which broadband Internet access service is provisioned, slamming could actually occur from a technical perspective.

⁴⁵⁴ See 47 C.F.R. §§ 64.2400-2401.

⁴⁵⁵ 47 C.F.R. § 64.2401.

⁴⁵⁶ See *supra* Part VIII.B.


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OPUC's Jurisdiction and the Applicable Laws and Rules

The following table summarizes OPUC's jurisdiction of communications services.

	Type of Carrier (1)				
	Cooper- ative	Utility	Competitive Provider	Radio & Wireless	Data & Internet
Annual Reports	X	X	X		
Fees & Surcharges:					
OPUC Fee		X	X		
RSPF	X	X	X	X	
Oregon Universal	X	X	X	(2)	

Service					
Safety	X	X	X		
Service Quality Standards		X	X		
Rate Regulation:					
Access Charges	X	X			
Extended Area Service		X			
Local Rates		(3)			
Other Services (Cellular, Data, Directories services, Equipment, Internet, Radio, Wireless)					

X - The carrier is subject to OPUC jurisdiction for this purpose.

(1) - Definitions

(2) - The radio or wireless carrier must have elected to participate in the Oregon Universal Service fund.

(3) - Generally, the ILEC must serve 50,000 or more access lines to be subject to local rate regulation.

Most laws related to OPUC and communications service providers are in Oregon Revised Statute (ORS) Chapters 183, 192, 469, 756, 758, 759, and 772.

- Rules that apply to OPUC and telecommunications providers.
- Copies of the laws and rules.
- Copies of Commission orders are available through the eDockets system.

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Obtaining a Certificate of Authority

What is a certificate of authority?

A certificate of authority is an order from the Commission that allows a person, corporation, company, or association to provide intrastate telecommunications service on a for-hire basis.

How does one become certified as a telecommunications provider in Oregon?

See ORS 759.020, ORS 759.050, and OAR Chapter 860 Division 032. Contact OPUC's Competitive Provider Analyst to request an application packet. The form is in Microsoft Word and can be sent electronically or by mail.

Is there an application fee?

No.

What is the process to receive approval to provide local exchange or long distance services?

You must complete and submit an application to OPUC's Competitive Provider Analyst, who will review the application for correctness and contact you if there are problems. On the 12th of the next month, OPUC will send a copy of the application to interested parties and certified telecommunications providers, who will have 20 days to file protests.

For applications to provide long distance service: If OPUC receives no protests, OPUC will prepare and send a certificate of authority to the requesting person, corporation, company, or association. This process generally takes about two months from the date of application.

For applications to provide local service: After the protest period, OPUC will assign the application to OPUC Telecommunications Staff for further review. Staff will prepare a proposed order to grant the certificate of authority and send it to the applicant for review and comment. After any issues are resolved, OPUC will prepare and send a certificate of

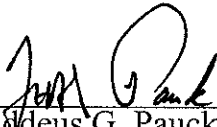
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true copy of the **RESPONDENT'S OPENING**
3 **BRIEF ON SUBJECT MATTER JURISDICTION** upon the following persons
4 designated on the official service list:

5 Lisa F. Rackner
6 Ater Wynne LLP
7 222 SW Columbia Street, Ste. 1800
8 Portland, OR 97201-6618
9 **of Attorneys for Complainant**

10 by **mailing** it in a sealed envelope, with postage paid, addressed to said person at
11 the address set forth above on the date set forth below.

12 Dated this 13th day of October, 2006.

13 
14 _____
15 Thaddeus G. Pauck, OSB #98318
16 BROPHY, MILLS, SCHMOR,
17 GERKING, BROPHY & PARADIS, LLP
18 Of Attorneys for Respondent
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