

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

In the Matter of)
)
Effects on Broadband Communications) PS Docket No. 10-92
Networks Of Damage to or Failure of Net-)
work Equipment Or Severe Overload)

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON NOTICE OF INQUIRY**

The National Association of State Utility Consumer Advocates (“NASUCA”) submits these reply comments on the Federal Communications Commission (“FCC” or “Commission”) Notice of Inquiry (“NoI”) issued on April 21, 2010 “to enhance [the Commission’s] understanding of the present state of survivability in broadband communications networks and to explore potential measures to reduce network vulnerability to failures in network equipment or severe overload conditions....”¹ These reply comments respond chiefly to the broadband network providers’ assertions that no regulation is needed to ensure survivability in the vitally important (and increasingly so) broadband networks.

As in many other areas that impact the public interest, the providers assert, like Qwest Communications International, Inc. (“Qwest”), that “[b]roadband network service providers operate in a competitive marketplace and have compelling financial and public interest incentives to fulfill customer service continuity expectations.”² Yet in the very next paragraph Qwest notes that “[b]roadband networks are designed to be redundant where feasible **and the**

¹ FCC 10-62 (rel. April 21, 2010), ¶ 3.

² Qwest Comments at iii. See also Comments of AT&T Inc. (“AT&T”) at i; Comments of MetroPCS Communications, Inc. (MetroPCS”) at 3; Comments of National Cable & Telecommunications Association at 2-3; Comments of United States Telecom Association at 1; Comments of Verizon and Verizon Wireless (“Verizon”) at 1.

cost to provide redundancy is economically justified.”³ The “economic justification,” of course, is justification for the network owner/provider, and will likely not encompass all of the externalities created by the traditional network and by the broadband network as well.⁴

Another theme running throughout the providers’ comments is essentially that “our networks are fine, so there is no need for regulation.”⁵ But again, the quality of one network in a competitive environment does not provide assurance that all providers strive for the same high quality, especially where the owners or managers of the network have decided that investment is **not** economically justified.⁶

And finally, the third theme is that “one size fits all” regulation will rob providers of flexibility to adapt to evolving problems.⁷ Regulation that sets minimum performance standards, but does not dictate how that minimum performance is to be achieved, does allow the flexibility to address new issues and difficulties.⁸

In closing, NASUCA must call attention to the comment of the Alliance for Telecommunications Industry Solutions (“ATIS”) that “the increasing dependence on broadband services demonstrates that the broadband networks are reliable.”⁹ A better way to look at the issue would

³ Id. It is of some interest that Qwest itself will, if its plans go through, become a part of CenturyLink, which apparently did not file comments in this proceeding.

⁴ As two specific examples, the concerns expressed by Sorenson Communications for the deaf and hard-of-hearing, and the concerns of the Edison Electric Institute regarding Smart Grid, may not be recognized by other traditional telecommunications providers.

⁵ See, e.g., AT&T Comments at ii, iii; Comments of Comcast Corporation (“Comcast”) at 4-16; MetroPCS Comments at 2; Comments of Sprint Nextel Corporation (“Sprint”) at 2; Verizon Comments at 2-5.

⁶ Telecordia Technologies also notes (at 4) the “lack of transparency on the underlying physical layout” of the network. This exacerbates the issue of individual network owners’ knowledge of and control over the reliability of the entire network.

⁷ See Comcast Comments at 16-18; MetroPCS Comments at 3; Sprint Comments at 1.

⁸ As indicated in NASUCA’s comments filed in CG Docket No. 09-158 on “wireless bill shock.”

⁹ ATIS Comments at ii.

be that the increasing reliance on broadband services **creates the need for the FCC to ensure that broadband networks are reliable.**¹⁰

As stated in the initial comments, “NASUCA urges the Commission not to ignore the traditional network in its inquiries into survivability. Focusing only on broadband would ignore a vital resource that is of continuing value to the Nation and its citizens.”¹¹ Equally importantly, NASUCA urges the Commission not to buy into the economic interests of the network providers in their resistance against this important area of regulation.

Respectfully submitted,

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¹⁰ An analogy may be appropriate here: Despite the increasing use of the automobile in the first half of the 20th century (perhaps as a result of reliability), it was not until the second half of the century that the need for automotive **safety** truly became part of the culture.

¹¹ NASUCA Comments at 8.