I am a consultant who has been working with the telecommunications industry for 25 years, both in voice and data. I am concerned about a weakness in the underlying assumptions that go in to the current proceeding. The current distinction between "information service" and "common carrier" is largely one of content vs. carriage, wherein an information service provider makes use of carriage, either public or private.

In the data communications world, this distinction can be expressed within the OSI Reference Model. Common carriage operates at the lower layers, while "internetworking" occurs at higher layers. ISO 8648 indicates that the likely break is in the middle of layer 3; the "internetworking role" is defined as operating above common carriage (which may occupy the "subnetwork" roles and below). The lower layers are either private (as in a LAN) or common carriage. I am not saying that the OSIRM is the only useful analytic methodology, but it is certainly the best known; other approaches also make use of layering, even if the terminology differs.

There is thus a clear break in the protocol stack between the role played by carriers and the role of the (unregulated) information service. A common carrier does not become an information service provider merely because it carriers the traffic of one.

The NPRM seems to take a "beads on a string" approach, in which layers are ignored and a device, and wire, are one or the other. Only by that approach can a raw DSL (ATM or Frame) circuit be viewed as an information service, which is really just its payload. It is an obsolete approach which ignores all current practice. A broadband link may carry anything in its payload, but it remains transparent to its payload and distinct, in layering, from its payload. The Commission should instead use a layered analysis, which recognizes that the lower layers are separate from their payload.

This clearly leads to a retention of the common carrier status of LEC-provided DSL. A LEC-affiliated ISP may indeed be the higher-layer subscriber to that circuit, but the two roles are fundamentally different.