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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92-495

In the Matter of	)	
	)	
Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation	)	CC Docket No. 92-256

Notice of Proposed Rulemaking

Adopted: November 5, 1992 Released: December 2, 1992

By the Commission:

Comment Date: February 1, 1993
Reply Comment Date: March 3, 1993

I. Introduction

1. In this Notice of Proposed Rulemaking, we propose to apply to GTE Corporation (GTE) the same regulatory framework of Open Network Architecture (ONA) that applies to the Bell Operating Companies (BOCs) for GTE's participation in the enhanced services market. Building on the substantial experience gained with the BOCs, we propose measures to speed GTE's implementation of ONA and nondiscrimination safeguards.

II. Background

2. Over the last six years, in the Computer III and ONA proceedings, the Commission has established a comprehensive regulatory framework of nonstructural safeguards, consisting of ONA requirements and nondiscrimination safeguards, to govern the BOCs' participation in the enhanced services market.[1] Under ONA, the BOCs are required to offer an

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[1] See Amendment of Section 64.702 of the Commission's Rules and Regulations, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon. 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration); Phase I Order and Phase I Reconsideration Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Phase II, 2 FCC Rcd 3072 (1987) (Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order); further recon., 4 FCC Rcd 5927 (1988) (Phase II Further Reconsideration Order); Phase II Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review pending, California v. FCC, No. 90-70336 (and consolidated cases) (9th Cir. filed July 5, 1990); Computer III Remand Proceeding: Bell Operating Company Safeguards and Tier 1 Local Exchange

unbundled set of ONA services to enhanced service providers (ESPs) based on expected market demand, the services' utility as perceived by enhanced service competitors, and technical and costing feasibility.[2] By requiring the BOCs to offer unbundled network services to ESPs, ONA creates increased opportunities for ESPs to provide, and customers to receive, a wide range of enhanced services.[3] The Computer III nondiscrimination safeguards consist of Customer Proprietary Network Information (CPNI) rules, network information disclosure rules, and nondiscrimination reporting requirements.[4] The CPNI rules, which govern the BOCs' treatment of CPNI, permit the BOCs to participate efficiently in the enhanced services market while balancing efficiency, competitive equity, and privacy considerations.[5] Network

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Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), pets. for recon. pending, pets. for rev. pending, California v. FCC, No. 92-70083 (and consolidated cases) (9th Cir. filed Feb. 14, 1992); Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (BOC ONA Order), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Reconsideration Order), 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), Erratum, 5 FCC Rcd 4045, pets. for recon. pending, pets. for review pending, California v. FCC, No. 90-70336 (and consolidated cases) (9th Cir. filed July 5, 1990), 6 FCC Rcd 7646 (1991) (BOC ONA Further Amendment Order), pet. for review pending, MCI Telecommunications Corp. v. FCC, No. 92-70189 (9th Cir. filed Feb. 19, 1992).

2 Phase I Order, 104 FCC 2d at 1065-66, para. 217.

3 ONA establishes increased opportunities for all ESPs to use the BOCs' regulated networks in efficient ways by making available these unbundled ONA services. Under the ONA model, ESPs obtain access to various optional, unbundled ONA services, termed Basic Service Elements (BSEs), through access links described as Basic Serving Arrangements (BSAs). Other elements of the model include Complementary Network Services (CNSs), which are optional, unbundled basic service features that an end user may obtain from a carrier in order to receive or use an enhanced service, and Ancillary Network Services (ANSs), which are non-Title II services, such as billing and collection, which may be useful to ESPs. ONA, by requiring BOCs to offer unbundled network services to ESPs, also serves as a safeguard against discrimination. See BOC ONA Amendment Order, 5 FCC Rcd at 3104.

4 As a Tier 1 local exchange carrier (LEC), GTE is already fully subject to the same cost accounting safeguards as the BOCs. Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities & Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates, Report and Order, 2 FCC Rcd 1298, 1304-05 (1987) (Joint Cost Order), recon. 2 FCC Rcd 6283 (1987), further recon., 3 FCC Rcd 6701 (1988), aff'd sub nom., Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

5 Our CPNI rules apply with minor exception to all information obtained by the BOCs as a result of a customer's use of network services. BOC ONA Order, 4 FCC Rcd at 215. Under our CPNI rules, the BOCs' enhanced services

information disclosure rules ensure that independent ESPs receive timely access to technical information related to new or modified network services affecting the interconnection of enhanced services to the BOC networks.[6] Nondiscrimination reporting requirements protect against possible discrimination against ESPs by the BOCs in the quality, and installation and maintenance, of basic services. These requirements focus on the level of service of BOC basic services used in providing the BOC's own enhanced services, as compared with that of BOC basic services used by their enhanced services competitors.[7]

3. The Commission in Computer III required each BOC to submit an ONA plan showing how it proposed to implement ONA requirements and nondiscrimination safeguards. In the BOC ONA Order in 1988, the Commission found that the BOCs' plans complied in certain respects with the Computer III requirements, but required various modifications to each plan.[8] In May 1990, we concluded that the amended plans complied substantially with the

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marketing personnel may not access the CPNI of customers with more than twenty lines unless they have obtained prior authorization from the customer, nor can they access the CPNI of any customer that requests that such information be withheld from BOC personnel. Independent ESPs must obtain advance authorization from the customer in order to obtain access to customer CPNI. The rules also require that the BOCs provide an annual written notice of CPNI rights to all multi-line business customers, and that any aggregated CPNI that a BOC makes available to employees involved in the marketing of its enhanced services must also be made available to independent ESPs on the same terms. BOC Safeguards Order, 6 FCC Rcd at 7605-14. BOCs must also develop password/ID systems for their databases containing CPNI. BOC ONA Order, 4 FCC Rcd at 223, para. 430; BOC ONA Amendment Order, 5 FCC Rcd at 3119, para. 137.

[6] Under our network information disclosure rules, a BOC must disclose the relevant network information to an ESP at the "make/buy point" subject to the ESP's execution of a nondisclosure agreement, and to the public at a point six to twelve months before introduction of the new or modified network service. Phase II Order, 2 FCC Rcd at 3087-88, paras. 107-12; see Phase I Order, 104 FCC 2d at 1080-86, paras. 246-55.

[7] Under our nondiscrimination reporting requirements, each BOC must: (1) demonstrate that its provisioning procedures and systems preclude discrimination in installation and maintenance, and quality of ONA services; (2) file annual affidavits attesting that it has not discriminated in the quality of installation and maintenance of ONA services provided to its ESP competitors; and (3) file quarterly reports comparing the timeliness of its installation and maintenance of ONA services for its own enhanced services operations with that for all customers. See Phase I Order, 104 FCC 2d at 1055-56, para. 192, 1066, para. 218; Phase II Reconsideration Order, 3 FCC Rcd at 1160, paras. 76-77; BOC ONA Order, 4 FCC Rcd at 235, para. 451, 248-49, para. 481.

[8] BOC ONA Order, 4 FCC Rcd at 255-60, para. 496.

requirements of the BOC ONA Order, approved each plan subject to further modifications, and established the final conditions for grant of relief from structural separation requirements.[9]

4. Shortly after the Commission approved the BOCs' ONA plans, the United States Court of Appeals for the Ninth Circuit in California v. FCC vacated Computer III.[10] The court found that the Commission had failed to justify adequately the decision to replace structural separation with nonstructural safeguards for BOC provision of enhanced services. Following California v. FCC, the Commission proposed to reinstate ONA, which had not been challenged before the Ninth Circuit, and to adopt a strengthened set of cost accounting and nondiscrimination safeguards to govern the BOCs' participation in the enhanced services market.[11] In the ONA Remand Order, the Commission required the BOCs to implement ONA regardless of the Commission's ultimate decision on the appropriate safeguards for BOC provision of enhanced services.[12] In the BOC Safeguards Order, the Commission instituted a strengthened set of cost accounting and nondiscrimination safeguards to govern the BOC's participation in the enhanced services market, and reestablished the final conditions for granting individual BOC petitions for structural relief.[13] Concurrent with that action, in the BOC ONA Further Amendment Order, the Commission approved some aspects of the BOCs' amendments to their ONA plans required in the BOC ONA Amendment Order, required each of the BOCs to submit amendments in four additional areas, and established ongoing reporting requirements.[14] In

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[9] BOC ONA Amendment Order, 5 FCC Rcd at 3104, para. 1, 3120, para. 149; see infra note 13.

[10] See 905 F.2d at 1217.

[11] See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, Notice of Proposed Rulemaking and Order, 6 FCC Rcd 174 (1990); Computer III Remand Proceeding, Notice of Proposed Rulemaking, 5 FCC Rcd 5242 (1990).

[12] ONA Remand Order, 5 FCC Rcd at 7720, para. 7.

[13] BOC Safeguards Order, 6 FCC Rcd at 7576, para. 10, 7624 n.212. The Commission reestablished the conditions for structural relief set forth in the BOC ONA Amendment Order, i.e., that structural separation requirements would be removed for each BOC when it filed a notice stating that: (1) it is technically prepared to offer each of its initial ONA services; (2) federal tariffs for each of its initial ONA services are in effect; and (3) it had filed state tariffs for each of its initial intrastate ONA services. BOC ONA Amendment Order, 5 FCC Rcd at 3105, para. 13.

[14] See BOC ONA Further Amendment Order, 6 FCC Rcd at 7677. The Commission required the BOCs to submit amendments describing: (1) plans for unbundling Signalling System 7 (SS7), Integrated Services Digital Network (ISDN), and Intelligent Network (IN) and generally how those services will fit into the ONA framework, (2) changes to CPNI plans in light of the

particular, the BOCs are required to file each year their projected deployment schedules for their ONA services; new ONA service requests from ESPs and ONA service requests that were previously deemed technically infeasible; SS7, ISDN, and IN projected deployment; new ONA services available through SS7, ISDN, and IN; various progress reports on the implementation of service-specific and long-term uniformity issues, billing information, and Operational Support System (OSS) services; and a list of BSEs used in the provision of the BOC's own enhanced services.[15] The semiannual reporting requirements include the filing of a matrix of BOC ONA services and state and federal tariffs; data regarding state and federal tariffs; the ONA Services User Guide; and other updated information in the areas of ESP requests, BOC responses, and services offered.[16] By November 1991, all BOCs had filed federal tariffs for their initial ONA services. Those tariffs became effective by February 1992.[17] At the present time, four BOCs have obtained structural relief.[18]

5. In Computer III, the Commission determined not to make GTE's participation in the enhanced services market subject to ONA requirements and

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modifications to CPNI requirements made in the BOC Safeguards Order, (3) changes in databases that are password/ID or otherwise restricted from access by BOC enhanced services marketing personnel to reflect the Commission's modified CPNI requirement adopted in the BOC Safeguards Order, and (4) CNSs that would be offered as BSEs. In May 1992 the Common Carrier Bureau approved the BOCs' amendments to their CPNI plans implementing changed CPNI requirements made in the BOC Safeguards Order. Filing and Review of Open Network Architecture Plans, 7 FCC Rcd 2999 (Com. Car. Bur. 1992).

15 BOC ONA Further Amendment Order, 7 FCC Rcd at 7677-78, Appendix B.

16 Id.

17 BOC Open Network Architecture Tariffs, 7 FCC Rcd 1512 (1992) (Ameritech not included); Ameritech Operating Companies, Revisions to Tariff F.C.C. No. 2, Open Network Architecture, 7 FCC Rcd 257 (1992) (Ameritech's ONA transmittals became effective in December 1991).

18 See Bell Atlantic's Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, 7 FCC Rcd 3877 (Com. Car. Bur. 1992); US West Notice and Petition for Removal of the Structural Separation Requirement and Request for Waiver of Certain State Tariffing Requirements, 7 FCC Rcd 3639 (Com. Car. Bur. 1992); Ameritech Operating Companies Notice and Petition for Removal of the Structural Separation Requirement, 7 FCC Rcd 4104 (Com. Car. Bur. 1992); Southwestern Bell Telephone Company Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket No. 90-623 (Com. Car. Bur., adopted October 29, 1992 and released November 2, 1992). NYNEX Telephone Companies has filed an application for structural relief. This application is pending.

nondiscrimination safeguards.[19] The Commission concluded that even though GTE resembled a BOC in terms of annual revenues, number of access lines, and exchanges served, the cost of imposing such safeguards on GTE outweighed the benefits at that time.[20] The Commission reasoned that because GTE's service areas are distributed nationwide in a large number of noncontiguous geographic areas, GTE was prevented from exercising monopoly control in large regions of the country, comparable to those served by BOCs.[21] The Commission stated, however, that it stood ready to revisit this issue after ONA was implemented for the BOCs.[22] Previously, in the Computer II proceeding, the Commission had determined not to require structural separation for GTE's provision of enhanced services.[23]

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[19] Courts have questioned in the past the FCC's classification of GTE in relation to the BOCs. See, e.g., California v. FCC, 905 F.2d at 1237.

[20] Phase II Order, 2 FCC Rcd at 3101-02.

[21] Id.

[22] Id. at 3073, 3101-02.

[23] Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC 2d 384 (1980) (Computer II), modified on recon., 84 FCC 2d 50, 82-83 (Computer II Reconsideration Order), modified on further recon., 88 FCC 2d 512 (1981) (Computer II Further Reconsideration Order), aff'd sub nom., Computer and Communications Industry Assoc. v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

The GTE Consent Decree required GTE to provide information services via either a separate subsidiary or a separate division. U.S. v. GTE Corp., 1985-1 Trade Cas. (CCH) ¶ 66,355, section IV (Jan. 29, 1985) (GTE Consent Decree); see U.S. v. GTE Corp., 603 F.Supp. 730, 742 (D.D.C. 1984) (order authorizing the GTE Consent Decree). However, the decree further provided that if a BOC is permitted to provide a particular information service in a state or an exchange area, the separation obligations of the decree would no longer bind a GTE operating company that offers these same services in the same state or in an exchange area associated with the BOC exchange area. GTE Consent Decree at section V(D)(2). The information services restrictions placed on the BOCs by the Modification of Final Judgment were recently removed, U.S. v. Western Electric Co., Inc., 767 F. Supp. 308 (D.D.C. 1991), appeal docketed, No. 91-5263 (D.C. Cir. Aug. 30, 1991), and the court has specifically removed the separation requirement applicable to GTE under the decree for GTE Hawaiian Telephone Company Inc. and GTE Alaska Inc., U.S. v. GTE Corp., No. 83-1298-HHG (D.D.C. Nov. 27, 1991). Accordingly, it appears that the GTE Consent Decree no longer requires GTE to establish a separate subsidiary or division for its provision of information services. The decree also established other requirements, for example, that GTE must give access to their local exchange networks to all information service providers on an equal and nondiscriminatory basis. GTE Consent Decree at section V; see 603 F.Supp. at 742. We solicit comment on this analysis and whether other provisions of the decree may affect our proposals herein.

III. Application of ONA and Nondiscrimination Safeguards to GTE

6. In Computer III, we stated that we stood ready to revisit the issue of application of ONA and nondiscrimination safeguards to GTE once implementation of ONA by the BOCs was completed. Because the BOCs are now in the final stages of implementing ONA, it is appropriate to address whether application of ONA and nondiscrimination safeguards to GTE would serve the public interest. We tentatively conclude that the public interest will be served by applying to GTE the same ONA regulatory framework that governs the BOCs' participation in the enhanced services market.[24]

7. By requiring that a carrier make available to ESPs unbundled basic network features and functions, ONA increases opportunities for all ESPs to use a carrier's regulated network efficiently so that they can both expand their markets for their present services and develop new offerings that can better serve the American public.[25] ONA permits ESPs and others to receive specific basic network functions, regardless of whether a carrier's enhanced services utilize those functions. ONA promotes the use of the network in the provision of enhanced services, whether provided by carriers or independent ESPs, thereby increasing the availability of enhanced services and promoting competition in the provision of enhanced services. In addition, as we explained in the BOC Safeguards Order, ONA and nondiscrimination safeguards effectively guard against discrimination by the BOCs in the provision of basic services to ESPs. Thus, application of the ONA regulatory framework yields the substantial public interest benefits of broadly protecting against discrimination throughout a carrier's network and actively promoting the efficient provision of enhanced services to the public.[26]

8. While already a large local exchange carrier, GTE has recently merged with Contel Corporation (Contel), significantly expanding the scope of its operations. This merger added to GTE approximately $3.4 billion in total revenue, 2.7 million additional access lines, and 1700 local exchanges, placing GTE in the position of one of the largest local exchange carriers in the United States by many measures.[27] The new scope of GTE's total

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[24] We do not address at this time application of ONA and nondiscrimination safeguards to telephone companies other than GTE.

[25] BOC ONA Order, 4 FCC Rcd at 11, para. 2.

[26] Id. at 15-16, para. 14.

[27] See FCC Common Carrier Statistics, Table 1.1 (1990/91 ed.); USTA Holding Company Report (1991). According to a recent USTA Holding Company Report, GTE's domestic telephone operations, when compared to the regional BOCs, rank as follows: number of exchanges - first; total operating revenue - second, behind BellSouth Corporation; total gross plant - second, behind BellSouth Corporation; number of employees - second, behind BellSouth Corporation; and number of access lines - fourth, behind Bell Atlantic

operations significantly increases the benefits that it could bring to the public by its conformance with ONA. In particular, with the increased number of exchanges and access lines that it now serves, imposing ONA requirements on GTE will bring substantially more customers the benefits of ONA. The increased scope of GTE's operations and its increased financial strength enhances GTE's ability to participate in the enhanced services market and its ability and incentive to discriminate against competitors. Application of nondiscrimination safeguards to GTE will effectively guard against such discriminatory actions. Accordingly, we tentatively conclude that the application of ONA and nondiscrimination safeguards to GTE would yield substantial public interest benefits by bringing to customers and ESPs operating in GTE's service areas the benefits of ONA, and by safeguarding against discrimination. After the Contel merger, these benefits appear to be substantially greater than when we last examined this issue.

9. At the same time, the Commission and the industry have gained substantial experience with the BOCs' implementation of ONA and nondiscrimination safeguards. This experience, and the measures we are proposing below to streamline and speed the implementation of ONA and nondiscrimination safeguards by GTE, will reduce the costs incurred by GTE, the industry, and the Commission in establishing an ONA environment for GTE. In addition, the scope and strength of GTE's operations, especially following the merger with Contel, give GTE a substantial ability to comply with the ONA requirements and nondiscrimination safeguards.[28]

10. We have previously recognized that GTE differs from the BOCs in that its service areas, many of which are rural, are more widely dispersed. In Computer III, we determined that we would not apply ONA and nondiscrimination safeguards to GTE because its service areas were distributed nationwide and mostly noncontiguous. GTE's merger with Contel has increased the extent to which it serves sparsely populated areas.[29] In information submitted informally in advance of this rulemaking, GTE argues that the Contel merger has strengthened the Commission's prior determinations

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Corporation, BellSouth Corporation, and Ameritech. USTA Holding Company Report (1992).

[28] GTE has estimated that the cost of implementing nondiscrimination safeguards would be $20 million in the first year. Letter from Carol L. Bjelland, Director-Regulatory Matters, GTE, to Pat Donovan, Attorney, and John Morabito, Attorney, Policy and Program Planning Division, Common Carrier Bureau, FCC, August 28, 1992, at 2 n.2 [hereinafter GTE Letter].

[29] Following the Contel merger, GTE provides service in 40 states. The merger added approximately 20% more access lines, but nearly doubled the total service territory. BOC serving areas are three times as densely populated as GTE's areas and cover no more than 39 LATAs, while GTE serves markets that are geographically dispersed across portions of 139 LATAs. In addition, the BOCs serve very large markets including New York, Chicago, Houston, and Los Angeles, whereas GTE serves much smaller markets and has a major presence in only two of the top fifty markets (MSAs). Id. at 9-10.

in that GTE is now a more rural and dispersed company and that, therefore, the case is more compelling today not to require it to comply with the ONA requirements and nondiscrimination safeguards.[30] We tentatively conclude that the geographic dispersal of GTE's service areas, and the fact that its operations are comprised to a greater extent of small, rural local exchanges, does not warrant not applying ONA and nondiscrimination safeguards to GTE. While GTE has been more geographically dispersed than any BOC and the Contel merger has made it more so, it is also larger than many of the BOCs by many measures.[31] We tentatively conclude that the benefits that could be achieved in view of its size and resources outweigh the fact that it is geographically dispersed. We solicit comment on this analysis. Based on these considerations, we tentatively conclude that the public interest would be served by imposing ONA requirements and nondiscrimination safeguards on GTE.

11. GTE contends that if the Commission determines to apply ONA and nondiscrimination safeguards to GTE, then the safeguards should be modified to make them less onerous to reflect GTE's many rural, small, local exchange operations. Concerning CPNI, GTE argues that its current internal policies and procedures prevent the inappropriate use of CPNI and that it should not be required to obtain prior authorization from multi-line business customers with more than 20 lines or to provide an annual written notice of CPNI rights to all multi-line business customers, alleging that they are too burdensome generally and especially for its small local exchange operations.[32] Concerning network information disclosure, GTE argues that the Commission's rules should not apply to GTE because it does not engage in the "make/buy" decision and because it already informs all customers of the introduction of new network capability.[33] Concerning nondiscrimination reporting, GTE contends that it should only have to show that it is in compliance with the spirit of the requirement because GTE's internal practices, procedures and systems preclude discrimination.[34] GTE argues that OSS requirements are not appropriate for GTE either because there is insufficient ESP demand to justify the necessary implementing steps.[35] GTE states that it is willing to furnish OSS services where they are justified and to commit to evaluating any bona fide request for OSS access using the model ESP input process as defined by the Information Industry Liaison Committee (IILC), and to furnish a response within 120 days. GTE also

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30 See supra note 28.

31 See supra note 27.

32 GTE Letter, supra note 28, at 14 & Attachment G.

33 Id. at 14-15 & Attachment G.

34 Id. at 14 & Attachment G.

35 Id. at 15 & Attachment G.

opposes imposition on it of the reporting requirements applicable to the BOCs as generally being too burdensome.[36]

12. Given the size and strength of GTE's operations, we tentatively conclude that it has a substantial capacity both to discriminate against competing enhanced service providers and to implement the same nondiscrimination safeguards that are applicable to the BOCs. While it is comprised of smaller local exchanges to a greater extent than the BOCs, some of the BOCs also have a large number of small exchanges and are nonetheless subject to ONA requirements and nondiscrimination safeguards. Accordingly, we are not now persuaded that we should propose to apply a reduced or modified set of ONA requirements and nondiscrimination safeguards to GTE. We seek comment, however, on whether a set of modified requirements such as those suggested by GTE should govern GTE's participation in the enhanced services market. In particular, we seek comment on whether we can, or should, seek to limit application of ONA and nondiscrimination safeguards to particular areas, such as large contiguous service areas. We will incorporate into the record of this proceeding the information that GTE has submitted in advance of this rulemaking, providing other parties an opportunity to comment on GTE's contentions.[37]

13. Accordingly, we propose to make GTE subject to the same ONA requirements and nondiscrimination safeguards applicable to the BOCs. We propose to require that it comply with those requirements and safeguards within twelve months of the date of release of the Report and Order in this rulemaking.[38]

IV. Streamlined Implementation

14. Under our proposal today, GTE will be required to comply with the same ONA requirements and nondiscrimination safeguards for participation in the enhanced services market within twelve months from the date a Report and Order in this proceeding is released. The experience gained from the development of ONA and nondiscrimination safeguards for the BOCs should enable us to streamline implementation of ONA and nondiscrimination safeguards by GTE.

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[36] Id. at Attachment G.

[37] See GTE Letter, supra note 28.

[38] Under this proposal, GTE will be subject to, and be required to implement, requirements as they exist twelve months after release of the Report and Order in this proceeding. If this proposal is adopted, these requirements will consist of the complete set of requirements applicable to the BOCs that have been developed in the Computer III and remand proceedings, the BOC ONA Orders, and future requirements, if any, that the Commission may establish for the BOCs up until twelve months after the date of release of the Report and Order in this proceeding.

A. Initial Offering of ONA Services

15. In Computer III, we required the BOCs to justify their initial offerings of ONA services based on the expected market demand, the services' utility as perceived by enhanced services competitors, and technical and costing feasibility.[39] In the BOC ONA Order, we carefully reviewed the BOCs' proposed initial ONA service offerings based on this showing. We approved the proposals in part but also required each BOC to compare its offering to other BOCs in an attempt to bring greater uniformity among the BOCs proposed ONA offerings. We approved the BOCs' proposed offerings in the BOC ONA Amendment Order.[40] Subsequently, the BOCs filed their ONA tariffs implementing the offering of their approved ONA service proposals. As indicated, the BOCs' ONA tariffs became effective by early 1992.[41]

16. Our lengthy review of the BOCs' initial ONA offerings and ONA tariffs and the implementation of approved BOC ONA service offerings allow us to propose to streamline our review of GTE's initial ONA service offerings. The BOC experience provides substantial guidance to GTE about our standards in evaluating the adequacy of such offerings, and has led to a developed expertise within the Commission in these matters. These factors should dramatically reduce, or even eliminate, the need for the Commission to review GTE's proposed ONA offerings prior to the filing of its ONA tariffs. We thus propose to streamline implementation of GTE's initial ONA offerings by foregoing the sequential ONA process used for the BOCs and instead requiring GTE to file its ONA tariffs at or about the same time that it files for approval of its proposed initial offering of ONA services. We solicit comment on two alternatives for the timing of review of GTE's proposed initial offerings of ONA services and its ONA tariffs: (1) requiring GTE to submit its ONA tariffs and its justification of its initial ONA services at the same time, or (2) requiring GTE to submit its justification of its initial ONA offerings 60 days before filing its ONA tariffs. The first approach would permit a simultaneous review and resolution of common issues that could be raised by GTE's proposed initial ONA offerings and its implementing tariffs; it is less likely to delay the offering to the public of GTE's ONA services. The second approach, on the other hand, could permit a preliminary review of GTE proposed initial offering of ONA services before it files its tariffs.[42] We solicit comment on the relative merits of these approaches.

17. Under either approach, we propose to review GTE's ONA offerings under the standards we applied to the BOCs. Thus, we propose to

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39 Phase I Order, 104 FCC 2d at 1065-66, para. 217.

40 See BOC ONA Amendment Order, 5 FCC Rcd at 3104, para. 1.

41 See supra note 17.

42 Under either approach, for administrative convenience, we would require GTE to submit its justification of its initial offering of ONA services in a separate filing from its ONA tariffs.

require that GTE demonstrate that its proposed initial offering of ONA services will adequately meet the needs of ESPs' in its service areas.[43] As we required of the BOCs, we propose to require that GTE provide annual deployment projections for the current year and each of three future years by type of ONA service in terms of percentage of access lines served in GTE's entire territory subject to the ONA regulatory framework and by market area[44] for all proposed interstate and intrastate ONA services, including BSAs, BSEs, CNSs, and ANSs.[45] Under our proposal, GTE will also be subject to all of the annual and semiannual reporting requirements that are applicable to the BOCs. We tentatively conclude that these requirements will assure achievement of our public interest objectives for application of ONA to GTE.

B. Nondiscrimination Safeguards

18. As indicated, over the last six years we have developed a set of nondiscrimination safeguards and requirements that govern the BOCs' provision of enhanced services. In the ONA plan approval process, we have carefully reviewed and approved the method of implementation of nondiscrimination safeguards selected by each of the BOCs. Given that approval, we propose to streamline implementation of nondiscrimination safeguards for GTE by requiring the carrier to implement each of these requirements in a way already approved for one of the BOCs in an ONA plan, unless GTE justifies a different implementation in this rulemaking. This approach will effectively build on the experience gained with the BOCs, streamline the regulatory review process, and speed implementation of nondiscrimination safeguards to GTE by eliminating the need for a separate proceeding after this rulemaking to review GTE's proposed implementation of nondiscrimination safeguards. At the same time, the range of methods used by the BOCs to implement our nondiscrimination safeguards and requirements will afford GTE significant flexibility in implementing our requirements. In addition, GTE can justify a different implementation of safeguards in this rulemaking, thus allowing the Commission to tailor its requirements to any special circumstances. We solicit comments on this proposal.

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[43] Given the guidance provided by the BOCs' implementation of ONA, we encourage, but do not require, GTE to conduct interviews with ESPs in order to ascertain any special needs of ESPs in GTE's service areas.

[44] As used in the BOC ONA plans, the term "market area" generally referred to a contiguous geographic area whose boundaries were delineated by the BOC. A market area encompassed at least one standard metropolitan statistical area (SMSA) (or, in the case of densely populated states, one consolidated statistical area (CSA)), as defined by the United States Census Bureau. The "market area" did not necessarily encompass an entire local access and transport area (LATA). See BOC ONA Order, 4 FCC Rcd at 179-80 n.822.

[45] To facilitate review of GTE's proposed initial offering of ONA services and comparison with the ONA services offered by the BOCs, we propose to require that GTE use the generic ONA Services User Guide names in its description of its proposed ONA services.

V. Preemption

19. In the BOC Safeguards Order, the Commission preempted state requirements for structural separation of facilities and personnel used to provide the intrastate portion of jurisdictionally mixed enhanced services. The Commission also preempted state CPNI rules requiring prior authorization that is not required by federal rules and state network information disclosure rules that require initial disclosure at a time different from the federal rule. The Commission did not preempt other state safeguards, but stated that it would review them, if necessary, on a case-by-case basis.[46] The Commission stated that its preemption of state structural separation requirements and state CPNI rules applied to state requirements applicable to AT&T, the BOCs, and independent telephone companies.[47] Those preemptions are fully in effect and prohibit states from requiring structural separation or such a prior authorization requirement for GTE's provision of enhanced services. The Commission also stated, however, that it was not preempting state network information disclosure rules applicable to carriers that are not subject to the federal network information disclosure rule.[48] Accordingly, there is no preemption in effect for state network information disclosure rules that could apply to GTE.

20. In this Notice of Proposed Rulemaking, we propose to apply to GTE the same network information disclosure rule that applies to the BOCs. In the BOC Safeguards Order, the Commission stated that its network information disclosure rule seeks to strike a balance between assuring that independent ESPs receive network information on a timely basis and preventing premature disclosure that could impair carriers' service development efforts and inhibit network innovation. The Commission also found that a state rule that required initial disclosure at a time different from the federal rule would negate the federal timing because, by definition, initial disclosure can occur only once. Because we propose to apply the same network information disclosure rule to GTE, state network information disclosure rules that require initial disclosure at a time different from that specified in the federal rule would equally negate the federal timing as it applies to GTE. Accordingly, we propose to preempt state network information disclosure rules applicable to GTE that require initial disclosure at a time different from the timing specified in the federal rule. We solicit comments on this analysis and proposal.

21. In this Notice of Proposed Rulemaking, we have solicited comment on whether we should adopt modified ONA requirements and

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46 BOC Safeguards Order, 6 FCC Rcd at 7630-31. The interrelationship of federal ONA policies and state regulation was extensively considered in the BOC ONA Order. There, the Commission decided not to take any preemptive actions with respect to BOC plans for state tariffed ONA services. BOC ONA Order, 4 FCC Rcd at 162-64, paras. 309-12.

47 BOC Safeguards Order, 6 FCC Rcd at 7635-36, paras. 129-30.

48 Id. at 7636-37, para. 131.

nondiscrimination safeguards for application to GTE. We additionally solicit comment on what, if any, different preemption of state requirements would be warranted if we adopt modified ONA requirements and nondiscrimination safeguards.

VI. Ex Parte Rules

22. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

VII. Regulatory Flexibility Act

23. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because the proposed rule amendments, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The proposed rule changes apply only to GTE and its affiliated companies that are considered dominant in their field of operation. The Secretary shall send a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq.

VIII. Comment Dates

24. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **February 1, 1993**, and reply comments on or before **March 3, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any document filed in this docket with the Commission's copy contractor, Downtown Copy Center, Room 246, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

IX. Ordering Clauses

25. Accordingly, IT IS ORDERED THAT, pursuant to Sections 1, 4, 201-205, 215, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, and 218, a NOTICE OF PROPOSED RULEMAKING IS

HEREBY ADOPTED to give notice of the proposed regulatory changes described above, and that COMMENT IS INVITED on these proposals.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy
Secretary