DOCKET FILE COPY ORIGINAL ORIGINAL

FEB 2 2 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its undersigned counsel, hereby submits its comments in response to the Notice of Proposed Rulemaking (NPRM)[1] proposing that the Commission's Open Network Architecture (ONA) regime and related nondiscrimination rules be applied to GTE Corporation (GTE). Although, as MCI has explained on several occasions, ONA is virtually moribund, there is no reason not to apply whatever minimal benefits may accrue from ONA to what is now the largest local exchange carrier (LEC).[2]

Moreover, because ONA is still so undeveloped, the Commission should also reject any suggestions that an even less stringent version of ONA -- if such a thing could be imagined -- be applied to GTE on account of its geographically dispersed service areas. The Commission's ONA rules already allow more than enough flexibility in the degree of uniformity required in ONA deployment throughout a LEC's service area. There is accordingly no need to water down the ONA and related

---

[1] FCC 92-495 (released Dec. 2, 1992).

[2] According to ¶ 8 of the NPRM, n.27, GTE now ranks first in the number of exchanges, following its merger with Contel Corporation.

No. of Copies rec'd 0+9
List A B C D E

nondiscrimination rules even more for GTE.

Background

In its NPRM, the Commission recites its version of the development of ONA and tentatively concludes that ONA and related nondiscrimination rules should be applied to GTE.

> 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. ONA permits ESPs and others to receive specific basic network functions, regardless of whether a carrier's enhanced services utilize those functions.... 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.[3]

Given GTE's increased size, following its merger with Contel Corp., the Commission states:

> The new scope of GTE's total 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.[4]

---

[3] NPRM at ¶ 7.

[4] Id. at ¶ 8.

The Commission also tentatively concludes that GTE's cost of complying with the ONA requirements will be relatively insignificant.[5]

MCI has explained, on numerous occasions,[6] the failure of ONA to measure up to the promises made for it in the Computer III rulemaking.[7] MCI attaches as Appendices A-C, and incorporates by reference: (a) its comments on the proposed reinstatement of the ONA rules on remand from California v. FCC, 905 F.2d 1217 (9th Cir. 1990);[8] (b) its most recent comments opposing relief for a Regional Holding Company (in that case, Pacific Bell), from

---

[5] Id. at ¶ 9.

[6] See, e.g., Comments of MCI Telecommunications Corporation, Reply Comments, Petition for Reconsideration of MCI Telecommunications Corporation, Reply Comments of MCI Telecommunications Corporation, Comments of MCI Telecommunications Corporation and Reply Comments of MCI Telecommunications Corporation, Filing and Review of Bell Operating Company Open Network Architecture Plans, CC Docket No. 88-2, Phase I, filed April 18, 1988, May 31, 1988, February 24, 1989, April 19, 1989, June 3, 1991 and June 24, 1991, respectively; Comments of MCI Telecommunications Corporation, Computer III Remand Proceedings, CC Docket No. 90-368, filed Sept. 10, 1990.

[7] Amendment of Section 64.702 of the Commission's Rules and Regulations, Phase I, 104 FCC 2d 958 (1986) (Computer III Order), recon., 2 FCC Rcd. 3035 (1987) (Computer III Reconsideration Order), further recon., 3 FCC Rcd. 1135 (1988), second further recon., 4 FCC Rcd. 5927 (1989); Computer III Order and Computer III 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); further recon., 4 FCC Rcd. 5927 (1988); Phase II Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

[8] Comments of MCI Telecommunications Corporation, Computer III Remand Proceedings, CC Docket No. 90-368, filed Sept. 10, 1990.

the structural separation requirements;[9] and (c) MCI's recent Supplemental Comments in CC Docket No. 88-2, consolidating and updating its critique of ONA.[10] All of these comments demonstrate the relative lack of development of ONA and the toothlessness of the related nondiscrimination rules.

The ONA Rules Should Be Fully Applied to GTE

MCI agrees with the Commission's tentative conclusion to apply the ONA requirements to GTE, but not because of any substantial benefits from ONA. Rather, the Commission is correct simply because the cost of applying ONA to GTE is so slight that even the minimal benefits that will be derived from applying ONA to GTE will be justified. There is no reason not to require GTE to meet the minimal standards that are now in place for ONA. No other regulatory safeguards applicable to GTE will be eliminated

---

[9] Comments of MCI Telecommunications Corporation on Pactel's Petition for Structural Relief and Request for Waiver, Filing and Review of Bell Operating Company Open Network Architecture Plans, CC Docket No. 88-2, Phase I, and Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, filed Dec. 31, 1992. See also, Comments of MCI Telecommunications Corporation on Nynex's Petition for Structural Relief; Comments of MCI Telecommunications Corporation on Ameritech's Petition for Structural Relief; Comments of MCI Telecommunications Corporation on Southwestern Bell's Petition for Structural Relief; Comments of MCI Telecommunications Corporation on US West's Petition for Structural Relief and Waiver Request; Comments of MCI Telecommunications Corporation on Bell Atlantic's Petition for Structural Relief, filed in CC Docket Nos. 88-2, Phase I, and 90-623 on Oct. 7, 1992, April 24, 1992, May 6, 1992, April 7, 1992 and April 10, 1992, respectively.

[10] Supplemental Comments, Filing and Review of Bell Operating Company Open Network Architecture Plans, CC Docket No. 88-2, Phase I, filed Dec. 17, 1992.

or reduced as a result of the application of ONA to GTE. It is also conceivable that the change in administrations might cause the Commission to improve ONA. In short, ONA, like chicken soup, can't hurt.

GTE's request to continue its exemption from ONA on account of the geographic dispersal of its service areas should be denied. GTE is now too large in size and scope to remain outside the coverage of the ONA rules. LECs are already excused from having to "'flash cut' a fully deployed ONA implementation in their entire service area." At least some aspects of ONA thus "may be limited geographically," and need not be introduced "in areas where it is neither necessary nor desirable."[11] Thus, the ONA rules allow for sufficient flexibility to accommodate variations in population density and geographic dispersal throughout a LEC's service area. Since those factors were taken into account in fashioning the ONA rules initially, they provide no justification for excusing GTE altogether from the coverage of those flexible rules.

The ONA Rules and Related Nondiscrimination Requirements Should Not be Diluted For GTE

By the same token, GTE's request to dilute the already feeble protections offered by ONA and related nondiscrimination

---

[11] Computer III Reconsideration Order, 2 FCC Rcd. at 3055, ¶ 142. It also follows from this specific exception that ONA should be fully developed in at least some portions of a LEC's service area, a goal that has not been achieved anywhere.

rules, on account of the same factors, should be rejected. The application of ONA to GTE will only do some good if it is not weakened any further. As explained above, the flexibility provided by the Computer III Reconsideration Order already fully accommodates GTE's geographically dispersed service areas.

Moreover, nothing in the GTE Letter[12] provides any justification for diluting the related nondiscrimination rules. GTE argues, in the GTE Letter, that it already conducts business consistently with the thrust of the nondiscrimination rules.[13] It never explains, however, why, if that is the case, it would be onerous or otherwise inappropriate to be covered by those rules.

GTE's "voluntary compliance" excuse is also undercut by its unsatisfying response to the discrimination complaint discussed in the GTE Letter and Attachment E thereto. Attachment E to the GTE Letter responds to an informal complaint filed by Voice-Tel of Northwest, a voice messaging provider, which complaint is attached hereto as Appendix D. Voice-Tel alleges that GTE does not make its call transfer feature available to enhanced service providers (ESPs) separately from its CentraNet Centrex service. Thus, an ESP that wants to provide voice messaging service has to

---

[12] Letter from Carol L. Bjelland, Director, Regulatory Matters, GTE, to Pat Donovan and John Morabito, Policy & Program Planning Division, FCC, dated Aug. 28, 1992, cited in NPRM at ¶ 9 n.28 as GTE Letter.

[13] Id. at Executive Summary, pp. 1, 14-15.

procure the entire CentraNet package just in order to obtain the call transfer feature that it needs. In response to this charge of unreasonable bundling, GTE blithely states, on page 2 of Attachment E to the GTE Letter:

> GTE-NW's tariffs for the furnishing of CentraNet service do not represent unlawful "bundling." In terms of the call transfer feature, it is correct to say this feature may not be purchased from GTE-NW independently of CentraNet. The reason is because as a technical matter the call transfer feature is inseparable from the furnishing of CentraNet service provided by current equipment.

When it comes to ONA, GTE clearly just doesn't get it. The whole point of ONA is to make features such as call transfer available independently of other network services so that ESPs can take just the features they need to provide their own services. If GTE thinks that its Attachment E demonstrates its "promot[ion of] the competitive policies that underlie the ONA requirements,"[14] it is seriously mistaken. Its revealing response to the Voice-Tel complaint demonstrates exactly why even the minimal ONA requirements that are now in force should be applied fully to GTE.

With regard to the network information disclosure rules, GTE argues in the GTE Letter that it does not really engage in any "make/buy" decisions because it simply follows the BOCs' lead in procuring new network equipment and, in any event, it already informs customers of the introduction of new network

---

[14] Id. at Executive Summary, p. 1.

capabilities.[15] The first point -- that GTE simply follows the BOCs' lead and therefore does not engage in "make/buy" decisions -- makes no sense. GTE still has to make its own decisions as to whether to buy equipment, and that is the point at which it should notify its access customers of that decision and of its implications for interconnection with the network. That GTE may typically make that decision for a certain type of equipment after the BOCs do makes GTE's decision no less relevant and significant for GTE's access customers. GTE's second point -- that it already informs customers about new network equipment -- demonstrates, if anything, the appropriateness and reasonableness of the network information disclosure rules. GTE accordingly has provided no justification for any exemption from those rules.

GTE's rationale for its request to be excused from the Operational Support System (OSS) "same access" requirement[16] is somewhat different. GTE's argument is simply that, because of inadequate demand, it is not economically feasible to provide ESPs with OSS access.[17] GTE never explains, however, why ESPs should not have the same access to OSS functions that GTE's own

---

[15] Id. at Executive Summary, pp. 14-15 and Attachment G thereto, "Analysis of Network Information Disclosure Requirements."

[16] Id. at Executive Summary, p. 15.

[17] Id. at Attachment G, "Analysis of Operational Support Systems (OSS) Access Requirements."

enhanced services have. GTE mentions several OSSs now in place in its various operating units, but dismisses them as not standardized[18] and thus, presumably, not as useful to ESPs as a single, standardized OSS would be. GTE's concern is welcome, but ESPs will be satisfied with the same access to whatever OSSs serve GTE's enhanced service operations. GTE has not explained why such access would not be possible or appropriate, and GTE should not be excused from the same access requirement for OSS functions, whatever GTE's perception of ESP demand may be.

In short, GTE should be subject to the same set of ONA and related nondiscrimination requirements as all of the BOCs. Its request to serve up only "ONA-Lite" should therefore be rejected. ONA, in its current form, is the very minimum that should be required of GTE in order for it to continue providing enhanced services.

Timing Issues

As to the timing of GTE's implementation of ONA,[19] it would be preferable to have GTE's ONA tariffs filed at least 60 days after its justification for its ONA offerings in its initial ONA plan, rather than simultaneously with its justification. Application of ONA to GTE has been delayed so long, and ONA is still in such a primitive state, that there would be no harm in

---

[18] Id.

[19] NPRM at ¶¶ 14-17.

delaying the tariffing of ONA services another 60 days or more in order to ensure sufficient opportunity to review the ONA services first. It is the adequacy of ONA, as implemented by the BOCs, that has been and continues to be the main problem with ONA, not which month it is implemented. GTE will no doubt continue that tradition. Interested parties should therefore have some lead time to review GTE's proposed ONA services before they are saddled with tariffs reflecting a possibly inadequate ONA plan.

Conclusion

The most important issue concerning ONA today is its dismally undeveloped state, over six years after the BOCs were first ordered to prepare ONA plans in the Computer III Order. Whether or not it is applied to GTE will not make much of a difference, but there is no reason not to apply the ONA requirements and related nondiscrimination rules to GTE, given the minimal cost.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: Frank W. Krogh

Frank W. Krogh
Donald J. Elardo
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-2372

Its Attorneys

Dated: February 22, 1993

APPENDIX A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of COMPUTER III REMAND PROCEEDINGS	CC Docket No. 90-368

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

Frank W. Krogh
Donald J. Elardo
1133 19th Street, N.W.
Washington, D.C. 20036
(202) 887-2372

Its Attorneys

September 10, 1990

TABLE OF CONTENTS

Page

SUMMARY..... ii

Background..... 2

The NPRM..... 4

ONA Should Be Implemented Irrespective of
Any Determination as to Structural Separation..... 5

ONA: The Original Intent..... 7

ONA: The Promise Unfulfilled..... 10

Conclusion..... 14

SUMMARY

There can be no question that the Commission "should require the BOCs to implement ONA independently of whether" the BOCs are allowed to provide unseparated enhanced services, as the NPRM initiating this proceeding proposes. As the Commission points out, "the availability of unbundled basic service functionalities used in the provision of enhanced services ... should facilitate the efficient provision and widespread availability of enhanced services and promote competition." If the Commission can ensure truly equivalent access to open BOC networks for independent ESPs, the public interest in widespread, economical enhanced services can be fully satisfied by ESPs.

Unfortunately, this ideal has not been realized in the ONA Proceeding. The form of ONA that the Commission has allowed the BOCs to implement in that docket will achieve neither the goals originally set out for ONA in Computer III nor the promises for ONA made to the Court in California v FCC, 905 F.2d 1217 (9th cir. 1990). The Commission originally expected the BOCs to develop "new forms of interconnection" and relied on the proposals of some of the BOCs emphasizing ESP access to unbundled basic network services in formulating its ONA policy in Computer III.

Since the Commission's initial formulation in Computer III of an open network scheme based on new forms of interconnection, which was presented to the Court in California v FCC, ONA has

regressed to a repackaging of limited services that the BOCs were already offering or would have offered anyway. The BOCs' ONA plans propose no new, improved or advanced means of interconnection and do not incorporate the forward-looking network designs originally envisioned in Computer III. The Commission has acknowledged that the BOCs' ONA plans consist largely of existing services and that the BOCs do not propose to implement any new access mechanisms for ESPs. The Commission now regards "fundamental unbundling" -- at one time the cornerstone of ONA -- "as a more long-term question" to be resolved when the BOCs are finally ready to address it. MCI has also demonstrated that the ONA plans will permit discrimination.

Thus, although the Commission is correct to require the BOCs to implement its ONA goals, continuation of ONA in its current form would actually defeat those goals. Moreover, such continuation would be inconsistent with the Court's approval of ONA in California v FCC, which was based on the FCC's promises in Computer III of what ONA could be. Given the Commission's lack of progress in fashioning effective ONA, the most productive course of action at this point would be to use this opportunity to propose a new ONA regime in a supplemental notice. Only by starting over can the Commission hope to fulfill the original promise of new forms of highly efficient interconnections to all of the unbundled network features needed by ESPs to provide the full array of enhanced services.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
COMPUTER III REMAND PROCEEDINGS	)	CC Docket No. 90-368

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI) submits these comments in response to the Notice of Proposed Rulemaking initiating this remand proceeding (NPRM).[1]

Although the Commission may view the vacating of its Computer III orders[2] in California v. FCC[3] as a setback, MCI believes that this development instead should be viewed as an opportunity to construct pro-competitive, innovative Open Network Architecture (ONA) policies that meet the goals originally

---

[1] FCC 90-283 (released August 6, 1990).

[2] Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, 104 FCC 2d 958 (1986)(Computer III Order), on reconsideration, 2 FCC Rcd 3035 (1987); 2 FCC Rcd 3072 (1987) (Computer III Phase II Order).

[3] 905 F. 2d 1217 (9th Cir. 1990).

expressed for ONA by the Commission and others. As the ONA Proceeding[4] progressed over the past two years, the Commission retreated further and further from those goals. Rather than simply reiterating what it has already stated in the ONA Proceeding, the Commission, and the public, would be far better off if the Commission used this proceeding to develop, in conjunction with the Regional Holding Companies (RHCs), the "efficient new forms of"[5] "highly efficient interconnections" and "equal interconnection" opportunities[6] that were promised in Computer III. If the Commission uses this opportunity to start over in developing truly open networks, rather than patching up its current ONA policies, it will have taken an important step toward realizing the original goals of ONA.

Background

In the Computer III Order, the Commission determined (erroneously) that it could substitute nonstructural safeguards -- cost allocation rules and antidiscrimination requirements, including ONA -- for the separate subsidiary requirements of

---

[4] Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 4 FCC Rcd 1 (1988) (BOC ONA Order), on reconsideration, 5 FCC Rcd 3084 (1990) (ONA Reconsideration Order), further order, 5 FCC Rcd 3103 (1990)(BOC ONA Amendment Order).

[5] Computer III, Notice of Proposed Rulemaking, FCC 85-397 (released August 16, 1985), at ¶ 124.

[6] Computer III Order, 104 FCC 2d 958, 1064 (1986).

Computer II.[7] The Commission rested its decision partly on the ground that ONA, which was yet to be designed, would ensure "equal access" by enhanced service providers (ESPs) to unbundled local exchange network features needed to provide their services.[8]

Having committed itself to the development of equal interconnections for ESPs in place of structural separation, the Commission then instituted the ONA Proceeding to develop the specifics of ONA. In the orders issued in that proceeding (ONA Orders), however, the Commission steadily retreated from the ONA goals it had set forth in Computer III and accepted Bell Operating Company (BOC) ONA plans that essentially constituted repackagings of network features the BOCs were already offering.

In California v. FCC, the Court, which did not have before it any of the ONA Orders, found that the Commission's stated rationale in Computer III for its then-promised ONA regime and other antidiscrimination requirements was based on an adequate record. The Commission's proposed use of cost allocation rules

---

[7] Id. at 1007-1012. See Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC 2d 384 (1980), mod. on reconsideration, 84 FCC 2d 50 (1981), mod. on further reconsideration, 88 FCC 2d 512 (1981), af'd sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

[8] Computer III Order, 104 FCC 2d at 1035-37, 1063-66.

was not based on an adequate record, however, requiring vacation and remand of the Computer III orders "to the Commission for further proceedings consistent with [the Court's] ... opinion."[9]

The NPRM

The vacation of the Computer III orders returns the industry to the Commission's Computer II regime. The Commission has initiated this proceeding to consider what "new permanent rules" should replace certain aspects of the vacated Computer III orders. Not included in this proceeding are the issues raised by the decision to substitute nonstructural safeguards for structural separation -- the crux of Computer III. Those issues will be addressed in a forthcoming remand proceeding.

The most important issue that is raised by the NPRM is the Commission's tentative decision to reiterate its conclusion in Computer III that the BOCs be required "to implement ONA independently of whether we ultimately conclude that we should permit the BOCs to provide enhanced services on an integrated basis."[10] As the NPRM points out, this conclusion was not questioned by the Court in California v. FCC and thus is consistent with the Court's opinion. The Commission accordingly

---

[9] 905 F. 2d at 1246.

[10] NPRM at ¶ 8.

proposed, on this point, "to reinstate the Commission's prior decisions concerning ONA in Computer III and the ONA Proceeding,"[11] (even though the ONA Proceeding had not been involved in California v. FCC and thus technically did not need to be "reinstituted").[12]

ONA Should Be Implemented Irrespective Of Any Determination as to Structural Separation

There can be no question that the Commission "should require the BOCs to implement ONA independently of whether we ultimately conclude that we should permit the BOCs to provide enhanced services on an integrated basis." As the Commission correctly points out, ideally,

> [t]he availability of unbundled basic service functionalities used in the provision of enhanced services, as required by ONA, should facilitate the efficient provision and widespread availability of enhanced services and promote competition. Additionally ... ONA will make any provision of inferior access to BOC enhanced service competitors more readily detectable and therefore will reduce the potential for discrimination between the BOCs' enhanced service operations and those of other ESPs.
>
> ... Computer III emphasized that a decision to retain separate subsidiaries would not exempt

---

[11] Id. at ¶ 9.

[12] The Commission also proposed to reinstate its prior decisions concerning the provision of enhanced services by AT&T pursuant to nonstructural safeguards and to reaffirm certain decisions in the Computer III Phase II Order. MCI does not object to those tentative conclusions.

> those carriers from the requirement for filing and implementing ONA plans.[13]

The Commission is correct to refocus on ONA independently of the issue of structural separation, since it is so important no matter how, or even whether, the BOCs provide enhanced services. If the Commission can ensure truly equivalent access to open BOC networks for ESPs, the public interest in widespread, economical enhanced services will be fully satisfied by ESPs. Whether or not the BOCs also provide enhanced services on an unseparated basis will then become a relatively unimportant public interest issue. BOC provision of integrated enhanced services thus cannot be a condition of, or prerequisite for, ONA.

Unfortunately, this ideal has not been realized in the ONA Proceeding. Although, as the Commission correctly notes, ONA "should facilitate the efficient provision and widespread availability of enhanced services," the form of ONA that the Commission has allowed the BOCs to implement in the ONA Proceeding will not achieve that goal. If the Commission simply continues its ONA Orders in their current form, as it has proposed, the public interest goals of ONA thus will not be realized.

The good news is that since the Commission has decided to

---

[13] NPRM at ¶¶ 8-9.

include the ONA Orders within the scope of this proceeding, the Commission has an opportunity to start over from the beginning the fashioning of effective, "new permanent rules" for ONA.[14] In order to understand why this is necessary, the Commission should direct its attention to the original goals of ONA as articulated in Computer III and contrast those lofty principles with the flaccid requirements actually imposed in the ONA Orders.

ONA: The Original Intent

In launching Computer III, the Commission tied its proposal to eliminate structural separation requirements with the concept that the BOCs allow other firms to realize the same efficiencies that the BOCs would obtain when colocating their enhanced service operations with their basic network facilities. Such a policy was necessary, the Commission believed, in order to prevent dominant local exchange carriers from denying their competitors the ability to compete effectively through the communications capabilities which the BOCs control and which competitors depend upon for access to their markets.[15] To achieve this objective,

---

[14] The Commission has moved to hold MCI's judicial challenge to the ONA Orders in abeyance on the grounds that those issues will be reviewed in this proceeding. See Motion to Hold in Abeyance, filed by the Federal Communications Commission on August 6, 1990 in MCI Telecommunications Corp. v. FCC, No. 90-1332 (D.C. Cir.). There would be no reason to hold MCI's appeal in abeyance unless the Commission fully intends to review the effectiveness of its ONA Orders.

[15] Computer III, NPRM, supra, at ¶ 37.

the Commission expected the BOCs to develop "new forms of interconnection" and/or permit competing ESPs to colocate their facilities in BOC central offices.[16] The Commission believed that its goal was feasible, and pointed to the developmental work being pursued by Ameritech as support for this assumption.[17]

In the ensuing comments, Ameritech described its Feature Node/Service Interface proposal. Under this network design, exchange services would be divided into their fundamental, or "primitive", capabilities. These discrete network elements would be unbundled and made available to any third party who could "activate and sequence the required subsets of primitive capabilities at appropriate points in the network" to provide its own services.[18] Ameritech expected this approach to provide ESPs with "new and powerful open interfaces to telephone company networks."[19]

Other parties advanced similar concepts. U S West said that the essence of the ONA concept was the unbundling of exchange

---

[16] Id. at ¶¶ 118-119.

[17] Id. at ¶ 124.

[18] Ameritech Comments, Computer III, at B-7. The NPRM indicates that the Commission is incorporating the records from CC Docket Nos. 85-229 and 88-2 "to the extent relevant to the issues raised by this Notice." MCI assumes that such blanket incorporation covers those items from the Computer III docket that are cited here.

[19] Ameritech Comments, Computer III, at B-1.

network capabilities. This unbundling would enable ESPs and others "to utilize the entire exchange network in a manner which best meets [their] own needs."[20] Similarly, the Department of Justice expressed hope that if exchange networks underwent technological changes, those networks might be made "transparent for the transmission of information, [and be] open to all vendors and end users in a manner that makes it difficult if not impossible for the carrier that owns the network to engage in discrimination."[21]

The Commission subsequently relied upon the submissions of those parties in formulating its ONA policy. Based upon its perception of these architectural concepts, the agency said that ONA could become a technological mechanism for preventing discrimination. With the development of "highly efficient interconnections"[22] and equal interconnection opportunities, the Commission said that the BOCs' ability to discriminate against their competitors could be limited. In furtherance of this plan, the Commission relied on general network unbundling and tariffing requirements. It anticipated that the ONA process would enable ESPs to utilize new network capabilities in a flexible and economical manner without hindrance by the BOCs, and

---

[20] Comments of U S West, Computer III, at 78.

[21] U.S. Department of Justice, Comments, Computer III, at 27.

[22] Computer III Order, 104 F.C.C. 2d at 1064.

that ESPs would have a voice in determining which network services would be made available for their use. The agency expressed the hope that its ONA principles would prevent improper cost-shifting and anticompetitive pricing and be "self-enforcing in controlling discrimination."[23]

This bright promise played well at the Ninth Circuit. Based on the record before it, which did not include anything from the ONA Proceeding, the Court found:

> The FCC's policy of Comparably Efficient Interconnection (CEI) is designed to ensure that each BOC will provide competitors with connections to the local exchange that equal the connections available to the BOCs' own enhanced service offerings. Moreover, the Open Network Architecture (ONA) policy requires each BOC to incorporate CEI concepts into the overall design of its basic service network. Thus, the record supports the Commission's finding that technologies for ensuring equal access have improved, and may be effective in preventing discrimination in ways not feasible in the past.[24]

In reality, however, the actual content of ONA does not measure up to these expectations.

ONA: The Promise Unfulfilled

---

[23] Id. at 1063.

[24] 905 F. 2d at 1233 (emphasis added).