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May 19, 1995

Mr. William F. Caton  
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Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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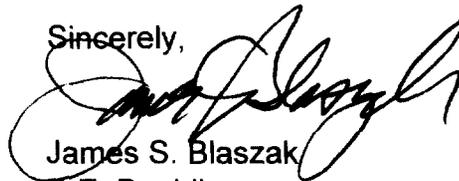
RE: Computer III Further Remand Proceedings:  
Bell Operating Company Provision of  
Enhanced Services, CC Docket No. 95-20

Dear Mr. Caton:

Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, enclosed please find an original and 4 copies of the Reply Comments of the Ad Hoc Telecommunications Users Committee in the above-captioned proceeding. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,



James S. Blaszak  
D.E. Boehling

Enclosures

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Company Provision of Enhanced )  
Services )

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**REPLY COMMENTS OF THE  
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

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AD HOC TELECOMMUNICATIONS  
USERS COMMITTEE

James S. Blaszak  
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May 19, 1995

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## SUMMARY

On April 7, 1995, twenty-three parties filed comments totaling more than 1,500 pages in response to the *Notice of Proposed Rulemaking* in a proceeding that has been before the Commission time and time again for almost a decade. Given the history, the Commission should not be surprised by the commenters' positions.

The RBOCs, as always, urge the Commission to allow them to provide enhanced services on an integrated basis with their basic local telephone service. They focus on developments in the enhanced services market since 1990 (when the RBOCs began providing such services on an integrated basis) as evidence of the benefits of integration and the absence of anticompetitive behavior. They utterly fail, however, to establish any causal link between those developments and integration. Moreover, the RBOCs exploited their monopoly position to gain the alleged benefits of integration.

The RBOCs also do little more than mimic the *Notice* with respect to risks associated with integration. They do not weigh either the significant risks of access discrimination and cross-subsidization that accompany integration against its minimal benefits when they conclude that the Commission should readopt the policy.

The RBOCs instead point to the fact that no ESP has filed a formal FCC complaint alleging these forms of anticompetitive activity. This carries little weight for several reasons. ESPs are often reluctant to become involved in

formal adjudicatory proceeding, particularly ones that might require their customers' cooperation. The RBOCs are limited by the MFJ to providing intraLATA enhanced services. Most complaints therefore involve intrastate services and are brought before state public services commissions, and the record reflects numerous such complaints.

Finally, Commission reaffirmance of structural separation will not impose relevant costs on the RBOCs or harm consumers. The RBOCs may incur costs to establish a separate subsidiary, but these are the same types of costs incurred by all new ESPs. They are not relevant in the Commission's cost/benefit analysis because the RBOCs took calculated risks in integrating their enhanced services while interested parties were challenging the orders implementing that policy. Nor will the separate subsidiary requirement necessarily harm consumers. No party has suggested a "flash cut" to structurally separate entities. The RBOCs could develop a migration strategy that would not cause undue disruption.

The Committee therefore asks the Commission to reaffirm its structural separation policy for RBOC provided enhanced services because only structural separation provides adequate protection against the risk of access discrimination and cross-subsidization.

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**REPLY COMMENTS OF THE  
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (the "Committee"), pursuant to Section 1.415 of the Federal Communications Commission's (the "Commission" or the "FCC") rules<sup>1</sup> and the Commission's Order of April 25, 1995, hereby submits its reply comments in the captioned proceeding.<sup>2</sup>

**INTRODUCTION**

On April 7, 1995, twenty-three parties filed comments totaling more than 1,500 pages in the captioned proceeding. The commenters fall into two distinct camps. The first consists solely of the Regional Bell Operating Companies ("RBOCs"), who uniformly (and not surprisingly) urge the

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<sup>1</sup> 47 C.F.R. § 1.415 (1994).

<sup>2</sup> The Commission initially set April 28, 1995 as the Reply Comment Date. *Computer III Further Remand Proceedings: Bell Operating Cos. Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, FCC 94-48 (released Feb. 21, 1995) ("Notice"). On April 25, 1995, it extended the deadline for filing reply comments to May 19, 1995 in response to Petitions filed by various parties to the proceeding, including the Committee. *Computer III Further Remand Proceedings: Bell Operating Cos. Provision of Enhanced Services*, CC Docket No. 95-20, Order, DA 95-908 (released April 25, 1995).

Commission to readopt the *Computer III* rules, which would allow them to continue offering enhanced services on an integrated basis.<sup>3</sup> The second consists of a wide variety of large and small enhanced services providers ("ESPs") and interexchange carriers ("IXCs") with a common interest in assuring a level playing field for *all* ESPs, including the RBOCs. They therefore ask the Commission to leave the *Computer II* separate subsidiary requirement in place and bind the RBOCs to that requirement.

The Committee -- and others in the second camp -- analyzed the relative costs and benefits of replacing structural separation with non-structural safeguards in their initial comments. In these Reply Comments, the Committee responds the RBOCs' argument that the benefits of integration (subject to -- perhaps reduced -- nonstructural safeguards) outweigh its costs.<sup>4</sup>

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<sup>3</sup> In *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) ("*California III*"), the Ninth Circuit vacated and remanded the *BOC Safeguards Order*. *Computer III Remand Proceedings: Bell Operating Co. Safeguards & Tier 1 Local Exchange Co. Safeguards*, 6 FCC Rcd 7571 (1991) ("*BOC Safeguards Order*"). This returned the RBOCs to the rules established by the Commission in *Computer II*, which permit the RBOCs to offer enhanced services only through fully separate subsidiaries. See 47 C.F.R. § 64.702(c); see generally *Amendment of Section 64.702 of the Comm'n's Rules & Regs.*, 77 F.C.C.2d 384 (1980), *recon.*, 84 F.C.C.2d 50 (1981), *further recon.*, 88 F.C.C.2d 512 (1981), *aff'd sub nom.*, *Computer & Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *aff'd on second further recon.*, 56 Rad. Reg. 2d (P&F) 301 (1984). For a detailed discussion of the *status quo* after *California III*, see *Computer III Further Remand Proceedings: Bell Operating Cos. Provision of Enhanced Services*, CC Docket No. 95-20, Comments of CompuServe Incorporated at 12-15 (filed April 7, 1995) (hereinafter generally referred to as "Comments of [party] at \_\_\_") ("Comments of CompuServe"); Comments of MCI Telecommunications Corp. at 6-7 ("Comments of MCI"); Comments of the Information Technology Association of America at 15-19 ("Comments of ITA"); Comments of Prodigy Services at 3 ("Comments of Prodigy"). The FCC has waived those requirements with respect to enhanced services for which the RBOCs have approved Comparably Efficient Interconnection ("CEI") plans. *Bell Operating Cos. Joint Petition for Waiver of Computer II Rules*, Mem. Op. & Order, DA 95-36 (Common Carrier Bureau Jan. 11, 1995). The RBOCs thus continue to offer their enhanced services on an integrated basis despite the decision in *California III*.

<sup>4</sup> The RBOCs raise several issues in their comments that the Committee believes are outside the scope of this proceeding. The most significant is the proposal by several RBOCs that

I. THE RBOCS HAVE NOT ESTABLISHED A CAUSAL LINK BETWEEN GROWTH IN THE ENHANCED SERVICES MARKET AND PRICE REDUCTIONS FOR VOICE MESSAGING SERVICES AND INTEGRATION.

The RBOCs urge the Commission to readopt the rules established in *Computer III*, which would permit them to continue providing basic and enhanced services on an integrated basis. They base this argument almost exclusively on the alleged benefits of integration, *i.e.*, growth in enhanced services, the introduction of new services and price reductions in such services over the past few years.<sup>5</sup> The RBOCs, however, utterly fail to show a causal link between these changes and integration.

A. Integration Did Not Cause the Growth in the Enhanced Services Market or the Voice Messaging Submarket.

The RBOCs assert that the general enhanced services market has grown by leaps and bounds over the past few years.<sup>6</sup> It is, however, quite possible -- even probable -- that almost equal growth in that market would have

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protocol processing be removed from the definition of enhanced services. Comments of Bell Atlantic at 33 ("Comments of Bell Atlantic"); Comments of Southwestern Bell Tel. Co., at 33 ("Comments of Southwestern Bell"); see Comments of USWest, Inc. at 9-10 ("Comments of USWest"). The Committee has filed comments on Petition of the Independent Data Communications Managers Association for a Declaratory Ruling That AT&T's InterSpan Frame Relay Service Is a Basic Service That Must Be Offered Under Tariff, which raises a similar issue. Reply Comments of Ad Hoc Telecommunications Users Committee, the Bankers Clearing House, and the New York Clearing House Association (filed Feb. 13, 1995). The Commission should consider the RBOCs' request -- if at all -- in the context of that proceeding.

<sup>5</sup> Comments of Southwestern Bell at 30; Comments of USWest at 7, 13-15 ("Comments of USWest"); NYNEX Telephone Companies Comments at 20 ("Comments of NYNEX"); Comments of Pacific Bell & Nevada Bell at 2, 18 ("Comments of Pacific Bell & Nevada Bell").

<sup>6</sup> *E.g.*, Comments of Bell Atlantic at 5-6; Comments of Southwestern Bell at 12-19; Comments of Pacific Bell & Nevada Bell at 9-14; Comments of NYNEX at 19-21; Comments of BellSouth Telecommunications, Inc. at 52-57 ("BellSouth Comments"); Comments of Ameritech at 3-4; Comments of USWest at 14-15.

occurred under structural separation. This is so because the RBOCs actively participate in only one subsegment of the enhanced services market -- residential and small business voice messaging services.<sup>7</sup> Growth in other segments of that market, *i.e.*, on-line information services, financial transaction services, value added network services, interactive voice/audiotext services, electronic data interchange, public e-mail, enhanced facsimile services, and internet access<sup>8</sup> were also quite large, and together dwarfed growth attributable to increases in RBOC voice messaging services subscribers.

Moreover, the RBOCs have failed to show a link between growth in the RBOC voice messaging services subsegment of the market and the integration of RBOC basic and enhanced services. As the Committee pointed out in its Initial Comments, growth in the demand for services and products often explodes over time as consumers become familiar with (and begin to accept) them.<sup>9</sup> This certainly appears to be the case with voice messaging. Even absent RBOC provision of network-based voice messaging services, residential and small business demand for voice messaging in the form of voice messaging equipment (*i.e.*, answering machines) was growing in the early '90s. This was likely to continue even absent RBOC participation. Accordingly, there is no

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<sup>7</sup> See, *e.g.* Comments of Bell Atlantic at 5 n.6; Comments of Pacific Bell & Nevada Bell at 8; Comments of NYNEX at 22-23.

<sup>8</sup> See Comments of Southwestern Bell at 12-21; Comments of Pacific Bell & Nevada Bell at 9-14.

<sup>9</sup> Comments of Ad Hoc Telecommunications Users Committee at 11-13 ("Comments of Ad Hoc Committee").

evidence that RBOC entry stimulated growth of the voice messaging services segment of the enhanced services market.

This is not to say that RBOC presence in the voice messaging segment of the market is insignificant. To the contrary, RBOCs are a “major force” in this market.<sup>10</sup> They nevertheless downplay their presence, perhaps in an attempt to defend against claims that the RBOCs are already dominating the enhanced services submarkets in which they have participated.<sup>11</sup> The RBOCs obscure figures showing their presence in the voice messaging services submarket by referring to the share of the *national* market for such services controlled by *each* RBOC. These figures range between one and six percent (or one and three percent if voice messaging equipment is included).<sup>12</sup> The relevant fact, however, is not each RBOC’s share of the national voice messaging market, which for the most part, it is prohibited from participating in due to the MFJ’s interLATA restrictions. Rather, each RBOC’s control over voice messaging services in its “home” market is the key focus for anticompetitive behavior. It is in these markets that the RBOCs are able to exploit their position as monopoly providers of local exchange services for joint marketing and joint installation and maintenance, and to do so to the disadvantage of competitors.

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<sup>10</sup> Comments of Southwestern Bell at 8, 22.

<sup>11</sup> See Comments of Bell Atlantic at 6; Comments of BellSouth at 8, Comments of NYNEX at 22-23; Comments of Pacific Bell & Nevada Bell at 8.

<sup>12</sup> *E.g.*, Comments of Southwestern Bell at 23; Comments of Bell Atlantic at 7, Comments of NYNEX at 23.

The RBOCs likewise argue that combined they control only twenty percent of the U.S. enhanced services market.<sup>13</sup> Not bad considering they entered the market less than five years ago, most offer only voice messaging services, and offer such services only in their “home” markets.

Despite claims to the contrary, the RBOCs may well have entered the market if structural separation had remained in place. In September, 1987, when the Court lifted the restriction in the Modification of Final Judgment on RBOC-provided information services, full structural relief was on the horizon.<sup>14</sup> The RBOCs therefore adopted a wait and see attitude. They had little incentive to offer such services on a structurally separate basis.<sup>15</sup> In fact, the RBOCs’ own economists admit that the combined effect of structural separation *and* the MFJ prohibition caused the RBOCs not to enter the voice messaging market, but do not attempt to assess the relative effect of each of those causes.<sup>16</sup> Thus, the

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<sup>13</sup> Comments of Bell Atlantic at 20.

<sup>14</sup> *U.S. v. Western Elec. Co.*, 673 F. Supp. 525 (1987).

<sup>15</sup> The Commission proposed full structural relief in 1985, *Amendment of Sections 64.702 of the Comm’n’s Rules & Regs, Notice of Proposed Rulemaking*, CC Docket No. 85-229, Phase I, 50 Fed. Reg. 33581 (1985), and began issuing orders to that effect in 1986. *Amendment of Section 64.702 of the Comm’n’s Rules & Regs.*, 104 F.C.C.2d 958 (1986) (“Phase I Order”), *on recon.*, 2 FCC Rcd 3035 (1987) (“Phase I Reconsideration”), *on further recon.*, 3 FCC Rcd 1135 (1988), *on second further recon.*, 4 FCC Rcd 5927 (1989); 2 FCC Rcd 3072 (1987) (“Phase II Order”); *on recon.*, 3 FCC Rcd 1150 (1988). Additional *Third Computer Inquiry* decisions include the Computer III Phase I Order and Computer III Phase I Recon. Order, *vacated sub. nom.*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (“California I”), *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (“Computer III Remand Order”), *vacated in part and remanded sub. nom.*, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (“California III”). See also Comments of MCI at 15.

<sup>16</sup> Jerry A. Hausman & Timothy T. Tardiff, “Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services.” at pp. 6, 13 (appended to each of the RBOCs’ Initial Comments) (“Hausman & Tardiff”).

RBOCs might have begun to provide voice messaging services in 1987 through a separate subsidiary had they not been holding out for full structural relief.

B. The Benefits of Integration -- to the Degree that they Exist -- Are Derived From the RBOCs' Exploitation of their Status as Monopoly Providers of Local Telephone Service.

As discussed at length in our Initial Comments, there are no true benefits of integration. The RBOCs have succeeded in the residential and small business voice messaging services submarket --- where others have not even tried -- solely because they used their position as the monopoly providers of local telephone services to their competitive advantage.<sup>17</sup>

The Commission gave the RBOCs control over their destinies -- and those of potential enhanced services competitors -- with three actions. First, it required the RBOCs to provide only those basic service elements ("BSEs") they use when offering enhanced services pursuant to an approved comparably efficient interconnection ("CEI") plan. Second, it prohibited ESPs from purchasing BSEs out of the interstate ONA tariffs unless they also purchased basic serving arrangements ("BSAs"). Third, the Commission priced BSAs like access services, which have high per minute costs.<sup>18</sup>

The RBOCs unbundled their networks only enough and in the manner needed for their enhanced services, but not to the extent or in the

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<sup>17</sup> Comments of Ad Hoc Committee at 9-10; see also Comments of ITA at 61; Comments of CompuServe at 24-25.

<sup>18</sup> *Filing and Review of Open Network Architecture Plans*, Mem. Opin. & Order, CC Docket No. 88-2, 4 FCC Rcd 1, 116, 130, & 143 (1988).

manner ESPs needed to provide competitive services. The RBOCs were thus able to succeed in the residential and small business voice messaging markets only by exploiting the control that they have over the basic facilities ESPs need to reach their customers.

## II. THE RBOCs' ANALYSES ALMOST TOTALLY IGNORE THE COSTS OF INTEGRATION.

The previous section focused on deficiencies in the RBOCs' efforts to extol the benefits of integration.<sup>19</sup> That, however, is not the end of the analysis. The Commission must also consider the costs associated with integration, which include the risk of access discrimination and cross-subsidization. The RBOCs virtually ignore -- at least obscure -- this side of the equation. We address their arguments in this regard below.

### A. The Nonstructural Safeguards Established By the Commission Do Not Sufficiently Protect Against the Risk of Access Discrimination and Cross-Subsidization.

Not surprisingly, the RBOCs unanimously claim that the Commission's nonstructural safeguards are adequate protection against the risk of access discrimination.<sup>20</sup> In doing so, the RBOCs simply mimic the Notice by

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<sup>19</sup> Hausman & Tardiff at pp. 5-10. While the title refers to the benefits and costs of RBOC integration of basic and enhanced services, the analysis identifies the benefits of integration (e.g., pp. 3-12) and the costs of structural separation (e.g., pp. 12-25). These are simply two sides of the same coin. A proper analysis would identify the benefits and costs of integration *vis a vis* structural separation -- that is, the benefits of integration over structural separation and the costs of integration instead of structural separation. Yet Hausman and Tardiff utterly fail to even list -- much less assess -- the costs of vertical integration, including access discrimination and cross-subsidization.

<sup>20</sup> E.g., Comments of BellSouth at 14; Comments of Ameritech at 10; Comments of NYNEX at 7.

pointing to the existing ONA requirements, including annual reporting requirements, comparably efficient interconnection (“CEI”), network disclosure, use of customer proprietary network information.<sup>21</sup> As evidence of the effectiveness of these safeguards, the RBOCs point out that ESPs have not filed formal complaints alleging violation of these rules or anticompetitive behavior by the RBOCs.<sup>22</sup>

As discussed at length in the Initial Comments, the nonstructural safeguards are ineffective at protecting against access discrimination, and may even be harmful to competitive ESPs.<sup>23</sup> The most significant flaw is that the CEI requirements apply only to enhanced services that the RBOCs wish to provide, and only for the network functionalities used by the RBOCs to provide such services.<sup>24</sup>

The RBOCs for the most part tend to ignore the risk of cross-subsidization that accompanies integration. Only Ameritech and NYNEX even tangentially refer to this issue, and quickly discard it as handled effectively by the Commission’s joint cost allocation rules and price cap regulation.<sup>25</sup> Those that

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<sup>21</sup> *E.g.*, Comments of BellSouth at 14; Comments of Ameritech at 10-11; Comments of NYNEX at 7-10; Comments of Pacific & Nevada Bell at 62.

<sup>22</sup> Comments of NYNEX at 14; Comments of USWest at 19 & n.32; Comments of Pacific Bell & Nevada Bell at 69.

<sup>23</sup> *E.g.*, Comments of ITA at 21-32; Comments of the Newspaper Association of America at 11-12 (“Comments of NAA”); Comments of the Association of Telemessaging Svcs. Int’l, Inc. at 6 (“Comments of ATSI”); Comments of MCI at 28, 33.

<sup>24</sup> *E.g.*, Comments of ITA at 21-22; Comments of NAA at 12-13; Comments of ATSI at 6.

<sup>25</sup> Comments of Ameritech at 11-12; Comments of NYNEX at 11-12.

ignored the risks may have made the better strategic choice. As the Committee and numerous other commenters pointed out in their Initial Comments, neither the Commission's joint cost allocation rules nor price cap regulation adequately protect against cross-subsidization.<sup>26</sup> The failure of these safeguards -- and the difficulty of administering them given limited Commission resources -- was confirmed by recent audits by the Commission.<sup>27</sup>

B. Neither Commission Orders Nor Market Developments Have Compelled the RBOCs to Unbundle their Networks

The RBOCs claim that, by implementing ONA and the Commission's Expanded Interconnection requirements, coupled with the threat of an order in the Intelligent Network Proceeding and of competition in the local exchange, they have fundamentally unbundled their networks in a manner that would aid competing ESPs and prevent access discrimination.<sup>28</sup> Their arguments are meritless.

First, the mere fact that ONA gives ESPs the right to request RBOCs to provide them with new basic service elements<sup>29</sup> is irrelevant and

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<sup>26</sup> Comments of Ad Hoc Committee at 14-17; Comments of ITA at 10, 38; Comments of MCI at 46-47; Comments of LDDS Communications, Inc. at 12 ("Comments of LDDS").

<sup>27</sup> Comments of Ad Hoc Committee at 14-16; Comments of MCI at 46-47; Comments of ITA at 38-41.

<sup>28</sup> *E.g.*, Comments of Bell Atlantic at 23-27; Comments of Ameritech 16-17; Comments of Southwestern Bell at 26-27; Comments of Pacific & Nevada Bell at 56-58.

<sup>29</sup> *See, e.g.*, Comments of Bell Atlantic at 22-23; Comments of BellSouth at 21-23; Comments of NYNEX at 8; Comments of USWest at 23; Comments of Pacific Bell & Nevada Bell at 53-54.

numbers associated with such requests misleading. At the RBOCs' urging, the Commission adopted a price structure for basic serving arrangements ("BSAs") that renders BSEs too expensive for ESPs.<sup>30</sup> ESPs will not seek unbundled network features that they cannot afford. In fact, there has been little or no ESP demand for such services.<sup>31</sup> Accordingly, RBOC claims that they are meeting ESPs' requests for new BSEs and no ESPs have requested Declaratory Rulings on such requests,<sup>32</sup> and that their annual reports to the Commission reflect their cooperation,<sup>33</sup> are of limited value.

Second, the Commission provided only limited unbundling of the network in its Expanded Interconnection proceeding,<sup>34</sup> and not the type of unbundling that ESPs need to provide their services efficiently.<sup>35</sup>

Third, the Commission has not released an order in the Intelligent Networks proceeding. It is thus impossible to determine the effect -- if any -- that it would have upon the RBOCs' ability to discriminate against competing ESPs.<sup>36</sup>

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<sup>30</sup> *E.g.*, Comments of ITA at 27-29.

<sup>31</sup> Comments of LDDS at 8-9.

<sup>32</sup> *See, e.g.*, Comments of BellSouth at 23; Comments of Ameritech at 10-12; Comments of NYNEX at 8; Comments of Southwestern Bell at 9; Comments of USWest at 25; Comments of Pacific Bell & Nevada Bell at 53.

<sup>33</sup> *See, e.g.*, Comments of Bell Atlantic at 23; Comments of BellSouth at 25, 31; Comments of NYNEX at 9-10; Comments of Southwestern Bell at 9; Comments of USWest at 24; Comments of Pacific Bell & Nevada Bell at 54.

<sup>34</sup> *See* Comments of NAA at 14.

<sup>35</sup> *E.g.*, Comments of MCI at 33; Comments of ITA at 26, 35.

<sup>36</sup> *E.g.*, Comments of MCI at 33; Comments of NAA at 15; Comments of ITA at 36.

Finally, the RBOCs' claims that if they were to engage in access discrimination ESPs would turn to their competitors are just plain wrong.<sup>37</sup> Competition in the local loop remains minimal,<sup>38</sup> and even the largest ESPs continue to rely almost exclusively on the RBOCs for delivery of services to their subscribers.<sup>39</sup> Thus, even if competition to the RBOCs is (slowly) developing in the local loop, no suitable alternatives exist today, and there are no market forces to check RBOCs' anticompetitive behavior against its enhanced services competitors.

C. The Risks of Access Discrimination and Cross-Subsidization Are Not Theoretical; The Record Is Replete With Examples of RBOC Anticompetitive Conduct.

The risks of access discrimination and cross-subsidization by the RBOCs are not theoretical. The record is replete with evidence of such conduct. There is, of course, the *MemoryCall* case cited in the Notice. Other instances of anticompetitive conduct have been documented by ESPs and competitive access providers, including Boston Phoenix, Scan Alert,<sup>40</sup> Missouri Telemessaging, MetroLink,<sup>41</sup> TCG and MFS.<sup>42</sup>

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<sup>37</sup> See Comments of Pacific Bell & Nevada Bell at 27, 56; Comments of NYNEX at 18, 29; Comments of Ameritech at 5.

<sup>38</sup> Comments of ITA at 5 n.6, 37; Comments of CompuServe at 16.

<sup>39</sup> Comments of CompuServe at 17-18; Comments of ITA at 3; Comments of ATSI at 2.

<sup>40</sup> Comments of ITA at 48-53; Comments of MCI at 20.

<sup>41</sup> *Id.* at 34-39.

<sup>42</sup> *Id.*

The lack of formal FCC complaints does not undermine the value of the evidence that the RBOCs have engaged in access discrimination as a result of integration. While there are no formal complaints, ESPs appear to have filed over a dozen informal complaints with the Commission.<sup>43</sup> Many of these instances did not result in a formal complaint because many ESPs do not want to be caught up in adjudicatory proceedings against their sole supplier of an essential part of their service, particularly when the ESP is small relative to the RBOC.<sup>44</sup> This is particularly the case where the ESP needs its subscribers to cooperate in order to prove their complaint against the RBOC.<sup>45</sup> Like any rational business, ESPs are reluctant to burden their customers when the customer could turn elsewhere for the services. Moreover, because the MFJ currently prohibits the RBOCs from providing interLATA services, RBOCs do not compete in the interLATA enhanced services markets and therefore have little incentive to discriminate against entities providing such services. The RBOCs do, however, provide intrastate voice mail services. This gives them an incentive to discriminate against competing providers of similar intraLATA services.<sup>46</sup> As a

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<sup>43</sup> Comments of CompuServe at 38.

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.*

<sup>46</sup> Comments of MCI at 41; Comments of Prodigy at 3.

result, most complaints arising in connection with such services are filed with the state public service commissions.<sup>47</sup>

III. COMMISSION REAFFIRMANCE OF THE STRUCTURAL SEPARATION REQUIREMENT WILL NOT HARM CONSUMERS.

The RBOCs go to great lengths to argue that structural separation would harm enhanced services customers and the enhanced services market. They first claim that the RBOCs would have to intermittently disrupt service to their customers if forced to migrate their enhanced services operations to a separate subsidiary.<sup>48</sup> While the RBOCs are correct that this may be a slight inconvenience for its voice mail customers, service disruption is a problem when perform maintenance on voice mail services. To mitigate customer complaints and confusion, the RBOCs generally send out prior notice of the downtime and schedule it for “off hours.” There is no reason why they could not do the same with respect to a transition to a separate subsidiary, particularly when no party to the proceeding has advocated a “flash cut” to reimpose structural separation.

The RBOCs also argue that a separate subsidiary requirement will greatly increase its costs and those of its customers. This argument fails for two reasons. First, the RBOCs focus on the cost increases that they will face if no

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<sup>47</sup> Comments of CompuServe at 38-45; Comments of ITA at 48-53; Comments of MCI at 29-39.

<sup>48</sup> Comments of Bell Atlantic at 17; Comments of BellSouth at 65; Comments of Pacific Bell & Nevada Bell at 73.

longer allowed to engage in joint marketing of basic and enhanced services.<sup>49</sup> These additional costs, however, are borne by the RBOCs' ESP competitors.<sup>50</sup> Imposing them on the RBOCs therefore does no more than create a level playing field. Second, even if the RBOCs' costs increase dramatically, they should not result in increased consumer prices if, as the RBOCs' claim, they are not dominant in the voice messaging services market. If that market is competitive, the RBOCs will not be able to raise their prices above those charged by competitors or the RBOCs will lose customers.

Finally, the RBOCs assert that structural separation will cause delays in bringing new enhanced services to the market.<sup>51</sup> While delays may harm consumers and the enhanced services market, so does integration where the RBOCs are able to exploit their monopoly position to gain a competitive advantage.

#### IV. STRUCTURAL SEPARATION IS THE MOST EFFECTIVE MEANS OF ALLOWING RBOCS TO PARTICIPATE IN, AND PREVENTING THEM FROM GAINING AN UNFAIR ADVANTAGE IN COMPETITIVE MARKETS.

The Initial Comments addressed at length how the separate subsidiary requirement provides greater protection against access discrimination and cross-subsidization than nonstructural safeguards.<sup>52</sup> Since parties filed their

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<sup>49</sup> *E.g.*, Comments of Bell Atlantic at 17; Comments of BellSouth at 57-58; Comments of NYNEX at 24; Comments of Pacific Bell & Nevada Bell at 71, 74.

<sup>50</sup> *E.g.*, Comments of Ad Hoc Committee at 9-11; Comments of ITA at 61.

<sup>51</sup> *E.g.*, Comments of Pacific Bell & Nevada Bell at 71.

<sup>52</sup> *E.g.*, Comments of Ad Hoc Committee at 18-21.

Initial Comments, Judge Green has issued an Order permitting the RBOCs to provide long distance services for by their cellular telephone service customers.<sup>53</sup>

Like the case at hand, Judge Green was concerned that the RBOCs be allowed to enter the competitive market, but only if they did not have the opportunity to abuse their position as the monopoly providers of local exchange services to gain a competitive advantage.

Judge Green therefore required the RBOCs to provide “[i]nterexchange services from cellular networks . . . by corporations that have been established as separate subsidiaries from the BOC’s local exchange companies and are physically and operationally separate from LEC facilities.”<sup>54</sup>

He explained that the separate subsidiary requirement was:

designed to reduce the risk of discrimination in the provision of interexchange access [to other IXCs providing long distance to cellular customers] by requiring the provision of local and interexchange service to be effected by entities that would be separate, both structurally and physically. . . . [and] would also reduce the risk of cross-subsidization, that is, the risk that the Regional Companies would use profits obtained from the provision of local service to lower the price of more competitive long distance service.<sup>55</sup>

Significantly, Judge Green denied RBOCs the benefits of joint marketing their local and long distance services. He believed that “the most important condition” was requiring the RBOCs to “market their long distance services separately from

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<sup>53</sup> *U.S. v. Western Elec. Co.*, Civ. Act. No. 82-0192 (HHG), Opinion (filed Apr. 28, 1995).

<sup>54</sup> *Id.* at 16.

<sup>55</sup> *Id.* at 16-17.

their local service, and use a separate sales force to market interexchange service. . . . [otherwise] customers could, with one inquiry, learn about local and long distance service from a Regional Company, while being required to make several inquiries to discover the availability of competing carriers."<sup>56</sup> This is precisely the "benefit" that the RBOCs claim will be lost under structural separation, and one which, like that discussed above, gives the RBOCs an unfair advantage over their enhanced services competitors.

### CONCLUSION

For the foregoing reasons, the Committee urges the Commission to leave in place regulations that permit BOC provision of enhanced services only through structurally separate subsidiaries.

Respectfully submitted,

AD HOC TELECOMMUNICATIONS  
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<sup>56</sup> *Id.* at 19.

## Certificate of Service

I, Leah Moebius, hereby certify that true and correct copies of the Reply Comments of the Ad Hoc Telecommunications Users Committee in the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services in CC Docket No. 95-20 were served this 19th day of May, 1995 via hand delivery upon:

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A handwritten signature in black ink, appearing to read "Leah Moebius", with a long horizontal flourish extending to the right.

Leah Moebius

May 19, 1995