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

In the Matter of)	
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)	
<u>Computer III</u> Further Remand)	CC Docket No. 95-20
Proceedings: Bell Operating)	
Company Provision of Enhanced)	
Services)	

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REPLY COMMENTS OF BELL ATLANTIC

**The Bell Atlantic Telephone
Companies**

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REPLY COMMENTS OF BELL ATLANTIC¹

I. Introduction and Summary.

The parties' comments present the Commission with a striking contrast. Opponents of structural relief trot out the same, tired arguments that the Commission has repeatedly rejected over nearly a decade, while Bell Atlantic and the other Bell operating companies ("BOCs") have quantitatively documented the substantial public interest benefits that have already occurred from structural integration and the overwhelming costs of structural separation.

The opponents of BOC relief recite their traditional theories of how the BOCs "might" use structural relief to harm competitors. They stretch to find a few isolated allegations of asserted misconduct, then try to generalize these into a pattern of "offenses." Closer inspection shows that most of these

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

"incidents" are nothing more than self-serving, unproved allegations of competitors, and most have no relationship to enhanced services or to this proceeding.

The most telling aspect of this record is what the proponents of structural separation are unable to show. They cannot show any enhanced service that any ESP could not provide as a result of actions by any BOC. They cannot even show that the BOCs have caused them to provide any enhanced service less efficiently, or at a higher price. They have not even tried to show that any BOC enhanced service has gained an unfair advantage over the competition. All this despite the fact that the BOCs have offered unseparated enhanced services for seven years. What the opponents cannot show undermines the opponents' merely theoretical concerns, which is all they have been able to muster.

Instead of putting any weight on these oft-repeated discredited theories, the Commission should look at the results. The enhanced services industry is robust, growing at double-digit rates, and highly competitive. The rate of growth of unaffiliated providers is accelerating, even as the BOCs' involvement increases. New markets have been opened, often because of the stimulative effects of the BOCs' own services. Customers have flocked to new BOC services - at least six million to date.

The record also shows that these stimulative effects, and the new services with wide public acceptance, will evaporate with structural separation. Without the ability to provide one-

stop shopping, without the economies of scope and scale from integration, the BOCs will be economically barred from introducing new services or from effectively marketing services that they do offer. The enhanced service providers that cry so fervently for structural separation may benefit from this - they lose the competition. But the public -- the millions of consumers and businesses that find the BOCs' enhanced service valuable -- they will be the losers.

Based on this record, the Commission can realistically come to only one conclusion. Structural separation for BOC provision of enhanced services badly disserves the public, while structural relief has fostered a robust, competitive marketplace. By re-establishing full structural relief, with the changes to the non-structural safeguards that Bell Atlantic urged in our initial comments, the Commission can help ensure that the enhanced service marketplace will continue to be innovative, robust, and serve the broad interests of the public, not the myopic, protectionist desires of a few competitors.

II. Theories of Potential Anticompetitive Behavior Ignore Overwhelming Evidence of Effective Competition.

Faced with empirical evidence that BOC structural relief has been an unqualified success, opponents are left to reiterating their vague theories as to how the BOCs will use their control over "bottleneck" facilities to undermine competition. Of course, the Commission has heard and rejected

these claims before, without the overwhelming evidence of public benefit that is in the present record. Each time it has looked at structural separation for enhanced services, in 1985, 1986 and 1990, opponents have presented the same theoretical arguments about how BOC participation in "their" enhanced services will undermine competition. Each time, the Commission has appropriately rejected the claims of potential abuse and granted structural relief. And each time, the dire predictions have proved hollow.

This time, the Commission has even a stronger underpinning for a similar conclusion -- a clear public interest record. The BOCs' comments give the Commission a wealth of quantitative documentation refuting these theoretical claims. For example, Bell Atlantic included data from the U.S. Department of Commerce, Frost and Sullivan, several newspapers, and the North American Telecommunications Association showing the competitiveness of the enhanced services market and cross-elastic CPE markets.² Other BOCs provided, from their perspectives, data showing the vast size and diversity of the enhanced services marketplace, and the BOCs' important role.³

Bell Atlantic, and several other BOCs, also submitted a study by Professor Jerry A. Hausman and Dr. Timothy J. Tardiff

² Comments of Bell Atlantic at 5-13.

³ **See, e.g.**, Comments of Pacific Bell and Nevada Bell on the Notice of Proposed Rulemaking at 7-27, Comments of Southwestern Bell Telephone Company at 10-25, and NYNEX Comments at 19-21.

which not only confirmed the competitiveness of the marketplace but quantified the immense cost to society of ineffective BOC participation caused by regulatory restrictions.⁴ This study showed that the loss in consumer welfare from the delay in introducing voice messaging service was \$5.7 billion.⁵ Projecting these delays to other emerging services, the authors estimated that the consumer welfare loss from BOCs' inability to provide certain new enhanced services, because structural separation makes them uneconomic, would be over \$70 billion per year.⁶

US WEST, Inc. presented an additional study by a leading consultant firm that examined the enhanced service markets from an historical perspective.⁷ This study concluded that the enhanced services market is not only competitive, but it is far more robust than would have been the case had the BOCs not participated.⁸

Based on this record, the conclusion is inescapable that integrated BOC presence in providing enhanced services has stimulated new demand, created new products and services, and

⁴ Hausman and Tardiff, **Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services** (April 6, 1995).

⁵ These delays were caused by divestiture decree restrictions and Commission rules. **See id.** at 14.

⁶ **Id.** at 16-20.

⁷ Booz, Allen & Hamilton, **The Benefits of RBOC Participation in the Enhanced Services Market.**

⁸ **Id.**

opened the market to additional participants. There is, therefore, no valid justification for returning to the failed policies of Computer Inquiry II by reinstating structural separation.⁹

III. The Opponents' Theoretical Claims Are Flawed.

Even in the absence of substantial evidence of public benefit, the opponents' theoretical arguments are unavailing and have previously been discredited. The United States Court of Appeals flatly rejected similar claims in removing the BOCs' line of business restriction for information services.¹⁰ The court found "persuasive evidence" that "the BOCs will be unable to discriminate against competing information service providers."¹¹ It concluded that an insignificant portion of an enhanced service providers' costs are susceptible to BOC discrimination¹² and that, in any event, price caps and other methods of streamlined

⁹ State commissions also expressed reservations about reimposing structural separation. Wisconsin finds subsidiaries "a step backwards in regulation and impede achievement of market efficiency," Comments of the Public Service Commission of Wisconsin at 6, while New York acknowledged that "requiring separate subsidiaries may result in customer confusion or inconvenience associated with the loss of branding and one-stop shopping." Comments of the New York State Department of Public Service at 2.

¹⁰ **United States v. Western Elec. Co.**, 993 F.2d 1572 (D.C. Cir. 1993).

¹¹ **Id.**, 1579-80.

¹² **Id.**, 1579.

regulation at the federal and state levels prevent any significant amount of cross-subsidization.¹³

Having failed to persuade both the Commission and the courts with their theories, the parties could conjure up no new arguments to propound here. For example, the so-called "study" submitted by MCI, ITAA and CompuServe is little more than a "reprise" of the same theoretical arguments that Hatfield Associates has made for nearly a decade.¹⁴ This time, however, because the earlier theories have been disproved by subsequent events, the authors now makes the claim that newer innovations, such as out-of-band signalling, integrated services digital networks, and intelligent networks, are going to cause the theoretical harms that older technologies have not.¹⁵ Contrary to these claims, however, all of these technologies have already been deployed, some (such as out-of-band signalling) nearly universally, without any evidence of any of these theoretical harms. Empirical evidence, therefore, has already discredited the major premise of the "study."

Undaunted by the lack of factual underpinning, the authors argue that these technologies create so many new points of interconnection and complexities that the BOCs will use them

¹³ *Id.*, 1580-81.

¹⁴ *See* Hatfield Associates, Inc., ONA: A Promise Not Realized -- Reprise, submitted on behalf of CompuServe, Inc., the Information Technology Association of America, and MCI Telecommunications Corporation ("Hatfield Study").

¹⁵ *Id.* at 18-25.

to discriminate against competitors.¹⁶ In this argument, the authors appear to be decrying as inherently anticompetitive the very brand of "fundamental unbundling" of the BOC networks which MCI, one of the sponsors, has long asserted before the Commission and the courts is the foundation of open network architecture ("ONA").¹⁷ Yet the Hatfield Study includes the argument that any further unbundling of the BOCs' networks would add to the opportunities for discrimination and would, therefore, be inherently anticompetitive.

In reality, as Bell Atlantic explained in our opening comments, distributed network technologies, such as the intelligent network, in fact increase the amount of network unbundling and have benefited ESPs. This view is also confirmed in the comments of Ad Hoc. Ad Hoc points out that these architectures take network intelligence out of the central office into a remote database.¹⁸ The fact that others may provide remote databases that interconnect (through mediated access) with the BOC's network in the same manner and which may duplicate some or all of the intelligence in the BOCs' processors eliminate even

¹⁶ *Id.* at 26-29.

¹⁷ This erroneous assertion also appears in the Hatfield Study at 9-12.

¹⁸ Comments of the Ad Hoc Telecommunications Users Committee at 8 ("Ad Hoc"). Ad Hoc contends that this distributed architecture eliminates some of the economies of integration that existed with older architectures. *Id.* However, the new architectures do not eliminate the critical advantages to the customer of "one-stop shopping" that facilitate provision of mass-marketed enhanced services.

the theoretical potential for discrimination and undermine many of the arguments supporting structural separation.¹⁹

Other parties that did not subscribe to the Hatfield Study likewise rely on pure theory to support their claims for structural relief. These parties range from traditional BOC opponents such as ATSI²⁰ and IIA²¹ to newcomers to Computer Inquiry III, such as NCTA²² and CIX,²³ that want to keep the BOCs from competing effectively in "their" businesses. Still others dredge up the familiar claim that structural separation is needed because the Commission is incapable of enforcing the

¹⁹ The Hatfield Study at 23-27 addresses several specific aspects of third party access to intelligent networks. These issues are properly considered in the context of the Intelligent Network proceeding, CC Docket No. 91-346, in which Bell Atlantic has discussed such access issues in detail.

²⁰ "[A] structural separation requirement ... would render this type of discrimination vastly more difficult to accomplish." Comments of the Association of Telemessaging Services International, Inc. at 7 ("ATSI") (citing one alleged case of "unhooking").

²¹ "Only structural separation can eliminate the risk of cost sharing between regulated and unregulated activities and the opportunity for intentional, or inadvertent, cost manipulation." Comments of the Information Industry Association at 2 ("IIA").

²² "Without separate subsidiaries for [video programming], the risk of undetected anticompetitive behavior is simply too great." Comments of the National Cable Television Association at 6 ("NCTA").

²³ "Without strong CEI and ONA protections, the BOCs will undoubtedly exploit their control over the local loop and attempt to offer inferior access to competitive ESPs." Comments of the Commercial Internet eXchange Association at 4 ("CIX").

structural safeguards now in place.²⁴ Given the effort and resources Bell Atlantic spends in ensuring that we fully comply with the Commission's nonstructural safeguards, and given the close scrutiny the Commission staff gives to these efforts, these allegations are entirely unfounded.²⁵

The Hatfield Study also concludes that structural separation is needed because the Commission's primary regulatory mechanisms are flawed. The authors cite price caps, accounting and audit rules and mechanisms, and the tariff review process as ineffective to prevent anticompetitive abuses and detect and remedy any problems that harm competition.²⁶ As discussed above, this claim is directly contrary to the findings of the D.C. Circuit in the Information Services case, findings which were based upon evidence containing the views of some of the country's most prominent economists and financial analysts.²⁷ It is also contradicted by documented evidence in this proceeding of the robustness of the enhanced service market, after years of unseparated BOC participation, and the lack of BOC

²⁴ **See, e.g.** Comments of CompuServe Incorporated at 20-21 and 35-36 ("CompuServe"), Comments of the Information Technology Association of America at 39-43.

²⁵ In Comments of US WEST, Inc. at Attachment 4, US WEST documents its efforts, which each of the BOCs largely replicate, to comply with the Commission's ONA requirements.

²⁶ Hatfield Study at 36-47 and 51-57.

²⁷ Excerpts from some of these affidavits are quoted in the following pages.

anticompetitive abuses. The record, therefore, shows that the system has worked and that competition has thrived.

Moreover, leading experts agree that structural separation is unnecessary and counterproductive. For example, US WEST has filed a cogent study by RRC, Inc. demonstrating that the claimed economic benefits flowing from structural separation are largely illusory.²⁸ Instead, structural separation causes consumers to wait longer for new products to be introduced and to pay more for those products than would otherwise be the case -- all with little or no increase in competitive protection. Examination by RRC of other industries where regulators have mandated structural separation, including airlines, banks, and gas pipelines, confirms the analysis -- that structural separation carries with it a huge public welfare cost with few if any competitive advantages.

The shortcomings of structural separation for enhanced services are well documented. Affidavits filed in the 1991 in the Information Services court proceedings by a series of distinguished economists, including Nobel prize winners, confirm RRC's view that separate subsidiaries are inherently inefficient and disserve the public interest. For example, George J. Stigler, Nobel Laureate and Professor Emeritus at the University of Chicago, and Professor Dennis William Carlton at the University of Chicago, attest that there are significant

²⁸ RRC, Inc., *The Economics of Structural Separation from the Prospective of Economic Efficiency*.

economies of scope in the provision of enhanced services that can be realized through structural integration. They dismiss opponents' call for separation, saying that "economies of scope would be lost if a separate information services firm were created, resulting in less efficient production of both local exchange and information services."²⁹

Similarly, Nobel Laureate Kenneth J. Arrow, economics professor at Stanford University, and Andrew M. Rosenfield, President of Lexicon, Inc. and Lecturer at University of Chicago Law School, point out that integrated provision of enhanced services will benefit basic service ratepayers.

The economies of scope and scale available to the RBOCs are in many cases available, if in lesser measure, to large customers. If not offered by the RBOCs, large customers will provide them for themselves, thereby reducing the traffic base to cover the fixed cost of local exchange service. Hence, most of the cost will fall on the remaining customers, typically residential users and small businesses.³⁰

Likewise, Sanford J. Grossman, Steinberg Trustee Professor of Finance at the University of Pennsylvania's Wharton School, has explained that "[t]here is no need to require the BOCs to put their information services business into separate

²⁹ Reply Affidavit of Dennis W. Carlton and George J. Stigler at 13, filed in **United States v. Western Elec. Co.**, No. 82-0192 (D.D.C. Jan. 15, 1991).

³⁰ Reply Affidavit of Kenneth J. Arrow and Andrew M. Rosenfield at 13, filed in **United States v. Western Elec. Co.**, No. 82-0192 (D.D.C. Jan. 15, 1991).

subsidiaries."³¹ Such separation, he points out, eliminates economies of scale and scope.³² Because BOC participation in the enhanced services market does not increase incentives for discrimination, Professor Grossman explains that there is no justification whatever for requiring separate subsidiaries.³³ Stanford Levin, former Illinois Commerce Commissioner and economics professor at Southern Illinois University finds non-structural regulatory tools, such as incentive regulation and cost allocations, effective in preventing cross-subsidization,³⁴ as does James E. Farmer of Arthur Anderson & Co.³⁵

IV. There Is No Pattern Of BOC Abuses.

As they have during each iteration of this proceeding, the opponents have presented a list of alleged anticompetitive acts by the BOCs in an effort to prove that nonstructural safeguards are ineffective. This short list is made up of largely self-serving claims by competitors that were collected over a five-year period. Moreover, examination of even this

³¹ Affidavit of Sanford J. Grossman at 17, filed in **United States v. Western Elec. Co.**, No. 82-0192 (D.D.C. Jan. 15, 1991).

³² *Id.*

³³ *Id.* at 11.

³⁴ Reply Affidavit of Stanford L. Levin at 13-16, filed in **United States v. Western Elec. Co.**, No. 82-0192 (D.D.C. Jan. 15, 1991).

³⁵ Affidavit of James E. Farmer, filed in **United States v. Western Elec. Co.**, No. 82-0192 (D.D.C. Jan. 15, 1991).

short list reveals that most have no relevance to enhanced services.

Leading everyone's hit parade is the Georgia Public Service Commission's ("Ga. PSC's") MemoryCall order, in which the Ga. PSC appeared to accept Southern Bell's opponents' claims of anticompetitive conduct.³⁶ Most of the BOCs' opponents generalize that this case, which involved one BOC in one state, "proves" that all the BOCs are guilty of a wide range of bad acts that warrant a return to structural separation.³⁷

The MemoryCall case proves nothing. BellSouth has detailed in its comments the fallacies of the PSC's order.³⁸ As BellSouth shows, the Georgia Commission repeatedly ignored relevant evidence, accepted as gospel faulty testimony which was corrected later in the record, misquoted witnesses, and even hedged in its own findings. Practices that the Ga. PSC found were anticompetitive were practices which this Commission had fully considered and found just and reasonable. In short, BellSouth fully demonstrates that the Ga. MemoryCall decision is at best "an anomalous order" which cannot validly serve as evidence of potential BOC abuses.³⁹

³⁶ ***In the Matter of the Commission's Investigation into Southern Bell Telephone and Telegraph Company's Provision of MemoryCall Service***, Docket No. 4000-U (Ga. PSC, June 4, 1991) ("MemoryCall").

³⁷ ***See, e.g.***, Comments of MCI Telecommunications Corporation at 28-30 ("MCI"), ATSI at 6-7, CompuServe at 38-40.

³⁸ BellSouth Telecommunications, Inc., Comments at 32-50.

³⁹ ***Id.*** at 50.

Whatever the merits of that order, however, that one state order cannot support the type of generalizations about BellSouth, much less all the BOCs, that the parties claim. Even regarding the actions of Southern Bell within Georgia, the contentions have not been adjudicated at this Commission, and the FCC, therefore, cannot use the MemoryCall order as proof of any of the claims.

Besides the MemoryCall decision, MCI supports its call for structural separation with a list of 14 alleged "anticompetitive abuses"⁴⁰ and 4 audit findings.⁴¹ MCI claims that this list of incidents, none of which involved a Bell Atlantic company, supports its contention that all the BOCs engaged in "motivated" cost-shifting to the detriment of the ESPs.⁴² A closer look at this list reveals that they are far less than meets MCI's eye. Of the 14 alleged abuses, only one involves enhanced services, and that is an unproven allegation by an association of BOC competitors. Not one of the others would be affected by the outcome of this proceeding and are irrelevant here. Similarly, only a portion of one of the audit claims even remotely relates to enhanced services, and that was a state audit that is still in litigation.

Moreover, the Commission's price cap rules ensure that the BOCs have no motivation or incentive to shift costs, because

⁴⁰ MCI at 33-38.

⁴¹ *Id.* at 43-44.

⁴² *Id.* at 45.

they could not recover any misallocated costs in higher rates for regulated services. Even if some motivation to cost-shift existed under the prior price cap arrangement, which it did not, a majority of BOCs have now chosen a "pure" price cap approach with no sharing. "Pure" price caps removes rates from allocated costs and makes any attempted cost-shifting useless.

In a similar vein, CompuServe asserts that it has uncovered 19 informal complaints filed with the Commission since 1991 that are classified as Computer III or ONA-related.⁴³ CompuServe does not indicate the basis for any of these complaints or their disposition, whether any or all were brought against the BOCs, or whether the complaints related to any of the issues in this proceeding. Even assuming arguendo that they were valid complaints against the BOCs dealing with the non-structural safeguards, the 19 complaints amount to fewer than one complaint per year per BOC - hardly a pattern of abuse. Moreover, the fact that none became a formal complaint means that they all were either successfully resolved or found to be without merit.

CompuServe also attaches copies of five informal complaints brought against Bell Atlantic - Maryland, Inc. during the past three years.⁴⁴ Not one of these complaints relates to enhanced services or ONA. One indicates that Bell Atlantic (then C&P) personnel had worked diligently to isolate and attempt to correct a particularly difficult and persistent basic service

⁴³ CompuServe at 38.

⁴⁴ *Id.* at Att. C.

problem. Although it appears that the problem was caused by software in the complainant's CPE (which the CPE vendor denies), the issue is still pending. A second complaint, which has been settled, involved claimed damages stemming from a 25 hour service outage suffered by a business customer in 1993. A third involved claimed damages for alleged delays beyond the promised installation date of some dial tone lines. This claim is awaiting documentation of the claim by the customer. The fourth complaint involved some technical difficulties that arose during the transfer of several direct inward dialing trunks from a 1AESS switch to a new 5AESS switch that Bell Atlantic was installing in the customer's central office. Those problems have been resolved. The final complaint dealt with differences in the level of tariffed rates for certain intrastate services provided to common carrier and private paging companies. Those rates have subsequently been equalized.

If the point that CompuServe is trying to make by attaching these five informal complaints is that Bell Atlantic is not perfect, Bell Atlantic will admit to that. Mistakes in installation and maintenance of customers' services, unfortunately, happen, although Bell Atlantic makes best efforts to minimize them. If CompuServe is attempting to use these letters to support its allegation that Bell Atlantic discriminates, or that there is any pattern of practices intended to harm competitors, none of them supports that claim and, therefore, they are irrelevant to this proceeding.

Two of the parties also cite the Commission's pending Orders to Show Cause relating to alleged accounting violations and reporting requirements as "demonstrating" that the BOCs are guilty of evading the Commission's accounting safeguards.⁴⁵ In fact, no finding of liability has been made in these cases, and the BOCs have just recently presented their responses to the Commission's order. The parties are, therefore, judging the BOCs guilty unless proved innocent. In addition, these cases all relate to alleged violations that occurred in 1988 and 1989 and generally had no relationship with provision of enhanced services.⁴⁶

In sum, the parties' defective "parade of horrors" do not support their claims of discrimination. Nor do they justify structural separation or any more stringent nonstructural safeguards.

V. There Is No Justification for Imposing Structural Separation for Enhanced Video Services.

In yet another reprise of a familiar theme, the cable interests repeat their call for structural separation of video

⁴⁵ Ad Hoc at 14-15, CompuServe at 27-31 (citing, *inter alia*, **Bell Atlantic Operating Telephone Companies, Order to Show Cause** FCC 95-73 (rel. March 3, 1995)).

⁴⁶ The major allegation against Bell Atlantic involved whether or not an accounting method adopted for trunk testing constituted "direct assignment" of costs. This type of arcane definitional dispute hardly shows that Bell Atlantic discriminates against its competitors.

programming services.⁴⁷ CCTA asserts that a BOC subsidiary is needed because the video market is already competitive.⁴⁸ The fallacy of this premise is obvious - even though there are a number of new entrants, it is the incumbent cable companies, not the BOCs, that are dominant providers of video distribution and programming. The cable TV industry operates separate networks that are available to some 96 percent of U.S. homes, and all American homes have access to other non-BOC providers of video programming, including over-the-air broadcasting and direct broadcast satellite services. By contrast, the BOCs are entering as newcomers, with a zero market share. Where the BOCs choose to offer common carrier video dialtone services, their underlying basic services subject to the full panoply of ONA/CEI safeguards, and the Commission has imposed a separate set of strict nondiscrimination requirements on BOC provision of the underlying video dialtone services.⁴⁹ Where the BOCs choose to provide programming over their networks under a traditional (non-common carrier) cable model, they are subject to all the same carriage

⁴⁷ NCTA, Comments of the California Cable Television Association ("CCTA"). The Commission should ignore as not germane to this proceeding these parties' other oft-repeated refrain, that telephone companies' entities providing video programming over video dialtone systems should be regulated in the same way as cable television companies. NCTA at 7, CCTA at 8.

⁴⁸ CCTA at 17-19.

⁴⁹ **Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58**, 7 FCC Rcd 5781 at ¶ 92 (1992).

requirements and other rules that apply to other cable television operators.

In addition, video programming services will be mass-marketed to consumers, just as voice messaging services have been. Imposing archaic structural separation requirements that inhibit the ability of the BOCs to mass-market their video services will simply deprive millions of consumers of access to a competitive source of video programming services.⁵⁰ That result may benefit the incumbent cable companies represented by NCTA and CCTA, but the public will be the loser.

VI. Claims That BOCs Dominate Standards Bodies Are Erroneous and Irrelevant.

MCI claims that the BOCs dominate standards bodies, including the Information Industry Liaison Committee ("IILC"), and that this allows them to impose network standards on ESPs and interexchange carriers.⁵¹ MCI also claims that the BOCs ensure that IILC and standards efforts are protracted, so that the BOCs can delay providing needed services for their competitors.⁵² These claims do not support structural separation.

⁵⁰ Bell Atlantic has shown the importance of integrated marketing to voice messaging. **See** Declaration of Robert N. Garner, Attachment B of Comments of Bell Atlantic. The same reasoning applies to other mass-marketed enhanced services, such as video programming.

⁵¹ MCI at Exh. B, Affidavit of Peter P. Guggina ("Guggina Aff.") at 4-9.

⁵² **Id.** at 9-18.

Far from the black hole that MCI appears to claim, the IILC has reached consensus on many difficult issues. In the past year alone, it has adopted a number of consensus papers on highly complex issues,⁵³ including unbundling.⁵⁴ Other consensus papers are in final preparation, and still others are under intensive study. While the resolution of some issues has taken some time - often as a result of MCI's intransigence - this is not the result of dominance by any party or group. Instead, it is because the issues are technically difficult and involve a number of conflicting interests and compromises by all sides. MCI's allegations of BOC dominance can be dismissed as "sour grapes" because MCI cannot always get its own way.

The only "evidence" that MCI provides for its further contention that the BOCs dominate the T1 standards committees is that there were more BOC attendees than representatives from ESPs or IXCs at certain sessions and that BOCs hold more leadership positions than other parties.⁵⁵ This of course, only "proves" that more of the BOCs' representatives chose to attend, not that they had any greater voice than the other representatives, and

⁵³ Bell Atlantic has recently submitted copies of seven issue reports adopted during the past year. Amendments to Bell Atlantic's ONA Plan at App. D (filed April 17, 1995).

⁵⁴ Subsequent to the filing of the April 15 ONA amendment, the IILC released its final report on Issue 026, Long Term Unbundling and Network Evolution (April 19, 1995).

⁵⁵ Guggina Aff. at n.16. MCI also falsely contends that Bellcore dominates the standards process, a contention that Bellcore is refuting separately. **See** Reply Comments of Bell Communications Research, Inc.

that the BOCs collectively are willing to commit more resources to facilitating the standards process than are other parties. In fact, as MCI well knows through its years of T1 participation, T1 decisions are made through due process and consensus, and any participant has the absolute right to argue its position at every stage of the process.⁵⁶

Moreover, all this is entirely irrelevant to the issue of structural separation. The network standards that are recommended in standards bodies and deployed in BOC networks are published and discussed well in advance of implementation. Regardless of the dynamics of the standards process, both affiliated and unaffiliated ESPs have ample opportunity to design their own networks to be consistent with the standard interfaces. In fact, neither MCI nor any other party has provided even one incident where any ESP had insufficient advanced notice of a new interface standard or where a BOC enhanced service was advantaged. As with other allegations in this proceeding, this one is merely a theoretical problem with no basis in fact.⁵⁷

⁵⁶ **See id.** Bellcore therein responds in detail to a number of MCI's other allegations.

⁵⁷ If the Commission required structural separation and the BOCs' enhanced service affiliates participated in standards sessions, MCI would undoubtedly argue that the BOCs' representatives were favoring the standards that their structurally separated affiliates want, and call for divestiture.

VII. Conclusion

The Commission's proper choice in this proceeding is unavoidable. The one-sided record requires that structural relief be retained. The public interest demands no less.

Respectfully submitted,

**The Bell Atlantic Telephone
Companies**

By Their Attorney

A handwritten signature in cursive script, reading "Lawrence W. Katz". The signature is written in dark ink and is positioned above a horizontal line.

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