

Hatfield mentions the Commission's installation and maintenance reporting requirements, but simply speculates that the reports "may not provide enough detail to permit anyone to determine whether discrimination is occurring."⁴⁷ Hatfield fails to mention that the Commission reviewed that issue and required the BOCs to provide substantially more detail in their reports in order to ensure that the determinations can be made.⁴⁸

ITAA not only ignores these safeguards but also the presence of competition when it states that the BOCs can delay the installation of inter-office links and that "[t]he potential for abuse is particularly great with respect to the private lines that connect an ESP with its customers and with an interexchange carrier's network."⁴⁹ These are the parts of the BOCs' networks that are most susceptible to competition. If a BOC discriminated against an ESP in this manner, the ESP would increasingly transfer its traffic to CAPs and others.

Similarly, CompuServe, ITAA, LDDS, and MCI totally ignore the CEI requirements when they argue that structural separation requires the BOCs' enhanced services operations to purchase network services on the same basis as competitors.⁵⁰ CEI requirements provide this protection, and these requirements are built into full structural relief via ONA.

⁴⁷ Hatfield, p. 34.

⁴⁸ Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rcd 1, 251, para. 487 (1988); Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084, paras. 73-80 (1990).

⁴⁹ ITAA, p. 8.

⁵⁰ CompuServe, p. 20; ITAA, pp. 8, 13; LDDS, p. 6; MCI, p. 41.

In addition, Ad Hoc and ITAA ignore the Commission's network disclosure and ONA plan amendment requirements. Ad Hoc states that under ONA the BOCs can grant themselves a headstart since "[t]hey need only provide the tariffed service offering when they introduce a new service."⁵¹ Similarly, ITAA merely concludes: "The requirement of a separate affiliate also provides greater certainty that network information will be disclosed in a timely and nondiscriminatory manner to all users."⁵² These parties are wrong. Under non-structural safeguards, the BOCs must provide disclosure of any network or service changes that affect the interconnection of an enhanced service at least six months before the BOC offers the service to anyone, including itself, and the BOCs also must file amendments to their ONA plans at least 90 days prior to using new ONA services.

NCTA also ignores the Commission's non-structural safeguards when it asserts that without separate subsidiaries for BOC video programming "the risk of undetected anticompetitive behavior is simply too great."⁵³ In the Telephone Company-Cable Television Cross-Ownership Rules proceeding, we have shown that the provision of programming should be treated like any other nonregulated or enhanced service and that the Commission's existing non-structural safeguards will ensure against cross-subsidy and other discrimination concerns.⁵⁴

⁵¹ Ad Hoc, p. 18.

⁵² ITAA, p. 13.

⁵³ NCTA, p. 6.

⁵⁴ Comments of the Pacific Telesis Group, Pacific Bell and Nevada Bell, March 21, 1995, pp. 8-18, Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54-63.58, CC Docket No. 87-266, Fourth Further Notice of Proposed Rulemaking. At pages 12-14 of those comments, we explain why the Commission's CPNI rules should be applied the same to video services as to enhanced services

Similarly, LDDS concludes, without any support: "In any event, with structural separation, the RBOC exchange company would, by definition, have more incentive to create unbundled ONA services that both its separated affiliate and other ESPs can find useful, and discrimination can be more easily monitored and prevented."⁵⁵ LDDS does not attempt to explain this conclusion and does not even mention the "120 day process" for ESPs' ONA service requests and the Commission's monitoring of that process, or the other non-structural safeguards that the Commission has developed in order to ensure that the same benefits can be attained without structural separation.

The Commission spent years developing, improving, and verifying its non-structural safeguards. Years of experience with the safeguards have established that they ensure protection of competition and consumers. The opponents of structural relief apparently think that they can ignore all these developments and all this experience and simply make the same unsupported arguments that they did years ago in the Computer II proceedings. The Commission should reject this feeble attempt and give their arguments no weight.

generally. That explanation rebuts CCTA's statement at p. 19 in its comments in this proceeding that CPNI rules should be more restrictive for video.

⁵⁵ LDDS, p. 10.

B. The Growth Of The Enhanced Services Market Substantiates And Helps Ensure The Success Of Non-Structural Safeguards

ITAA and NAA assert that the growth of the enhanced services industry and the presence of large ESPs does not help support the granting of structural relief for the BOCs.⁵⁶ They are wrong. First, the growth of the market during the years that the BOCs have been allowed to provide integrated enhanced services provides evidence that the BOCs have not harmed ESP competition and that the BOCs' presence has, in fact, helped stimulate the growth of the market. This growth is accelerating. For instance, since the filing of our comments, "eight of the nation's biggest newspaper chains...formed a national network that links local newspaper on-line services throughout the country."⁵⁷

Second, the presence of large ESPs ensures that any BOC attempt to discriminate would be followed by a complaint to the Commission. Prodigy speculates that no formal complaints have been filed against the BOCs at the Commission because of the costs involved with fighting against companies such as the BOCs which have large resources.⁵⁸ This is ironic given that Prodigy is owned by Sears and IBM. Prodigy does not describe any complaints that it would have brought but for this supposed fear of facing large companies.

⁵⁶ ITAA, p. 37; NAA, p. 16.

⁵⁷ "Big Newspaper Chains Riding the Internet," San Francisco Chronicle, April 20, 1995, p. D1.

⁵⁸ Prodigy, p. 2.

C. **Examples Of Regulatory Disputes Do Not Show Any Failure Of The Non-Structural Safeguards**

Opponents of structural relief desperately attempt to establish the existence of BOC discrimination by trotting out every example of BOC activities or problems that they can possibly, and improperly, allege shows some impropriety. This attempt adds up to nothing but a list of irrelevant or immaterial events, which simply establish that the telecommunications industry is extremely complex and that problems, mistakes and disagreements occur. It would be hard to imagine a weaker case than this one developed by opponents of structural relief against the BOCs. Its weakness actually supports the conclusion that the non-structural safeguards are working well to protect competition and consumers.

Georgia PSC Memorycall Proceeding

ATSI, CompuServe, and MCI assert again that the Georgia Memorycall matter shows that the BOCs discriminate in the provision of access.⁵⁹ We explained in our comments why they are wrong and that the matter actually shows a past difference of opinion between the Georgia Public Service Commission and the Commission.⁶⁰ MCI, however, asserts: "The Commission never explained in the Computer III Remand Order why conduct that the Commission conceded would violate the CEI rules and that occurred under an approved CEI plan (see 6 FCC Rcd at 7623 n. 211) did not

⁵⁹ ATSI, p. 6; CompuServe, p. 38; MCI, p. 28.

⁶⁰ Pacific Bell and Nevada Bell, pp. 69-70.

demonstrate that the CEI rules were ineffective."⁶¹ Review of the footnote cited by MCI reveals 1) that the Commission described conduct that would violate not the CEI rules applicable prior to full structural relief but the "CEI/ONA" rules applicable after full structural relief, 2) that there was no showing that conduct which violated the CEI rules had occurred under an approved CEI plan, and 3) that the Commission explained in detail why "[t]he Georgia PSC proceedings do not show that [the Commission's] safeguards are ineffective."⁶²

Service Problems And Informal Complaints

CompuServe's comments are an example of how far some competitors will reach in order to attempt to build a case against the BOCs where they do not have one. CompuServe asserts: "There is no shortage of examples of BOC discrimination against their enhanced service competitors."⁶³ CompuServe, however, then simply lists some service problems that it says it has experienced in the past. CompuServe admits that it does not have any evidence that these problems were the result of any discrimination.⁶⁴

In order to attempt to support its position that it has experienced some service problems, CompuServe attached an affidavit by Vickie Rutkowski dated

⁶¹ MCI, p. 30.

⁶² Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, Report and Order, 6 FCC Rcd 7571, 7623, n. 211 (1991) ("Computer III Remand Order").

⁶³ CompuServe, p. 36.

⁶⁴ Id. at 37-38.

October 27, 1993. This affidavit does not add any weight to CompuServe's argument. For instance, Rutkowski's sole mention of Pacific Bell is her statement: "Pacific Bell missed the promised installation due date of 8/30/93. Instead, the installation happened on 9/2/93."⁶⁵ Based on the limited information provided, we cannot track the installation in order to determine whether the three day delay was our fault or CompuServe's. Moreover, Rutkowski admits that her "trouble list" is "not intended in any way to allege that I have knowledge that in any of the cases the RBOCs acted in bad faith or intentionally."⁶⁶ In any event, because CompuServe has many complex, unique requirements, shortly after this alleged problem we moved CompuServe's account, along with those of other customers in a similar situation, to our National Accounts Center where our experts are specially trained to handle unique requirements. These efforts are concrete evidence that we are doing all that we can to ensure timely installations and service reliability for all our customers, including ESPs.

Undaunted by the weakness of its initial point, CompuServe continues: "Ample evidence of BOC discrimination exists."⁶⁷ CompuServe's evidence, however, turns out to be no evidence at all. CompuServe says that, since 1991, 19 informal complaints nationwide have been filed with the Commission that are classified as either Computer III or ONA-related. CompuServe was able to review six of them, found no allegations of BOC discrimination, but nonetheless concludes that "it is logical to assume that, based on the classification of the complaints as Computer III and

⁶⁵ Id. at Exhibit A, p. 9.

⁶⁶ Id. at Exhibit A, p. 10.

⁶⁷ Id. at 38.

ONA-related, at least some of the complaints may involve allegations that the BOCs have discriminated against their enhanced service competitors."⁶⁸ This is pure speculation. What it shows is that CompuServe has worked hard to find evidence against the BOCs and has not found any.

Statement Concerning Jurisdictional Separations

CompuServe also reaches to draw conclusions of nefarious intent from out-of-context statements by BOC representatives that express legitimate concerns. CompuServe states: "The BOCs realistically cannot be expected to be enthusiastic about policing themselves."⁶⁹ CompuServe's sole "evidence" of this, however, is a "statement by Gary McBee, chairman of the Alliance for Competitive Telecommunications, a coalition of the BOCs, concerning the Commission's requirements for assigning costs between jurisdictions." CompuServe asserts that McBee's statement that "[t]here is absolutely no need for [jurisdictional separations]" displayed "a rather cavalier attitude regarding the purpose of cost allocation requirements."⁷⁰

Actually, there was nothing cavalier about McBee's statement, and it is irrelevant to this proceeding. In the article that CompuServe cites, McBee was discussing the telecommunications reform legislation. McBee's legitimate point was that a goal of the legislation is to allow regulation of the BOCs' basic services based on

⁶⁸ Id.

⁶⁹ Id. at 34, n. 78.

⁷⁰ Id.

prices, rather than costs, and thus the legislation should not require, and lock into place, the mechanisms of cost-based regulation. McBee was not discussing the separation of regulated from non-regulated costs, which is involved in the Computer III non-structural accounting safeguards that are relevant to this proceeding.

Order To Show Cause

Ad Hoc and CompuServe assert that the Commission's recent Orders To Show Cause directed to each of the BOCs show that accounting safeguards cannot be relied upon to guard against cross-subsidy.⁷¹ These assertions are without merit. In its Order setting forth Pacific Bell's apparent violations of Section 220(d) of the Communications Act, the Commission does not allege that we discriminated against third-party providers in order to improve our competitive position for any service. Moreover, the Order relates to activity in 1989, prior to the Commission's strengthening of its non-structural safeguard accounting requirements related to this proceeding. For these reasons, the Order To Show Cause is irrelevant to this proceeding.⁷²

⁷¹ Ad Hoc, p. 15; Compuserve, pp. 27-28.

⁷² In our May 2, 1995 Response To Order To Show Cause, we showed that three of the alleged violations were one-time events, of no material significance, in a pooling process in which we no longer participate. Two alleged violations involved reasonable, good faith interpretations of the Commission's rules, and did not in any way result from the failure of any "internal process." Where it is warranted, we will correct our reporting or our rates to reflect the Commission's own interpretations of these rules. The remaining alleged violation, which involved the misclassification of amounts in Account 7250, resulted from a concealed logic error in Bellcore-designed software. The error was immaterial for accounting purposes, and was not discovered even by outside auditors, who reviewed this program for us and found that it was reliable. In the aggregate it was we, not ratepayers, who were harmed by this error. The logic error has now been corrected, both in our reports and in our rates.

California PUC Investigation On Open Access

MCI quotes the California PUC as saying: "We believe that inadequacies in federal regulatory safeguards may very well be responsible for much of the current lack of interest in mass market ventures."⁷³ This statement was made prior to the introduction of any evidence in the California PUC's proceeding and merely reflected an unsupported opinion. To the extent that some potential service providers may have decided not to enter mass market ventures in California, that may be the result of the California PUC's heavy regulation and the uncertainties caused by that regulation. Or it may be because most ESPs have traditionally preferred to target large customers.

In any event, the evidence in our comments in this proceeding contradicts the notion that there is a "current lack of interest in mass market ventures." For instance, both mass-market voice mail and Internet-based email services are growing rapidly.⁷⁴ It was BOC entry into the voice mail business that brought price competition to service bureaus and created a residential market for network-based voice mail services.⁷⁵ Some competitors continue to focus on larger customers as opposed to competing with the BOCs in providing low-priced services to the mass market. Their avoidance of the mass market supports the need to allow the BOCs to continue to provide integrated enhanced services.

⁷³ MCI, p. 20 (emphasis removed).

⁷⁴ Pacific Bell and Nevada Bell, pp. 13-21, 47-48.

⁷⁵ Id. at 15-17.

IntraLATA Toll Competition

MCI asserts that "Pacific Bell secretly manipulated the [California PUC ("CPUC")] intraLATA toll competition proceeding through unreported ex parte contacts with the CPUC...."⁷⁶ Actually, we did not intentionally engage in any improper lobbying with decision-makers. Our involvement in the CPUC's proceeding was requested by CPUC staff members, and we complied with the requirements that they set out. After an investigation, the CPUC issued a new decision implementing intraLATA toll competition in California.

Centrex

MCI states: "Pacific Bell refuses to allow its Centrex customers to route intraLATA calls to competing toll carriers without dialing extra digits."⁷⁷ This statement is immaterial to this proceeding. First, this issue is moot because since April 19, 1995 our customers have been able to route intraLATA calls via the Centrex FRS/ARS features to competing toll carriers. Second, this was not a question of discriminatory access. Rather it was a question of the proper timing of presubscription in order to allow local competition based on new state rules that are not yet in place. It was a

⁷⁶ MCI, p. 37.

⁷⁷ Id.

question of whether some customers should be able to obtain presubscription sooner than others merely because Centrex is involved.⁷⁸

Concerning a different Centrex matter, Hatfield states: "Of the two principal kinds of N-ISDN interfaces, the RBOCs have placed heavy emphasis on the one that works in conjunction with Centrex at the expense of the other that is utilized by PBXs."⁷⁹ In our recent Annual Report on Open Network Architecture, we describe the widespread availability of our N-ISDN.⁸⁰ For instance, we describe our SDS ISDN which is offered to Pacific Bell's non-Centrex customers. It experienced a growth of about 800% in the past 12 months due to increased customer demand for higher speed access to Internet and other on-line services, due to widespread telecommuting, and due to remote LAN access applications.⁸¹ Moreover, Centrex is not just a BOC service. MCI, MFS, and others are in the Centrex business.⁸²

Late-Payment Fees

MCI mentions Pacific Bell's "improper late-payment fees."⁸³ This issue is irrelevant to this proceeding since it had no anticompetitive implications. Moreover, the

⁷⁸ These were the same issues involved in the matter mentioned by Compuserve involving the request by hooked, Inc. for Centrex service. Compuserve, p. 47.

⁷⁹ Hatfield, p. 31 at n. 46.

⁸⁰ Pacific Bell and Nevada Bell Annual Report on Open Network Architecture, April 17, 1995, pp. 6-10, Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2.

⁸¹ Id. at 9.

⁸² See, e.g., Pacific Bell and Nevada Bell, p. 32.

⁸³ MCI, p. 38.

CPUC found no evidence to suggest that Pacific intended to defraud its customers or to violate its tariffs.⁸⁴

California PUC Enhanced Services Audit

MCI alleges that a California PUC Audit found that state ratepayers had subsidized development of Pacific Bell's enhanced services.⁸⁵ This allegation is highly misleading. We have all along denied these allegations of cross-subsidization. The audit was not conducted by the CPUC's Compliance and Advisory Division, but rather by the Division of Ratepayers Advocates, a department within the CPUC responsible for advocating positions on behalf of regulated ratepayers. The DRA does not, however, represent the views of the CPUC Commissioners or other departments within the CPUC. The DRA's audit report was released in 1990, and in July of 1992, the CPUC adopted a settlement between the DRA and us that addressed ratemaking treatment of some enhanced services. The settlement did, among other things, require us to issue a refund to ratepayers and reduce rates prospectively. The settlement was reached to resolve an aging issue in a more timely and efficient manner than protracted litigation. The settlement states that it is not to be construed as an admission of imprudence, wrongdoing, or liability, but rather is a reflection of the mutual desire of the parties to expeditiously resolve issues, in the interest of all the parties.

⁸⁴ T.U.R.N. v. Pacific Bell, Decision 93-05-062, mimeo (May 19, 1993), modified, Decision 94-04-057, mimeo (April 20, 1994).

⁸⁵ MCI, p. 43.

In the order authorizing us to transfer some of our enhanced services operation to a subsidiary, the CPUC directed that the "going concern value" of those operations be paid to ratepayers. The CPUC reasoned that ratepayers were "at risk" due to the inclusion of some enhanced services expenses in our 1990 "start up revenue adjustment." This award, in light of the ratemaking adjustments made under the settlement, results in double payment to our regulated ratepayers. Realizing an error may have been made in its order, the CPUC expressly invited us to file a petition to explain and eliminate this inequity. In January of 1993, we filed a petition to modify the order and eliminate this double payment, and are now awaiting a decision from the CPUC. To date, there has never been a finding of intent to illegally cross-subsidize non-regulated operations.

Wireless Spin-Off And NARUC Audit

MCI asserts that "Pacific Bell has continued to fund its enhanced services, as well as other competitive ventures, with ratepayer revenues."⁸⁶ This is untrue. In an attempt to support its assertion, MCI states: "The CPUC permitted Pacific Telesis Group to spin off its wireless service operations to an independent company only on condition that Pacific's ratepayers be reimbursed \$7.9 million for their funding of development costs."⁸⁷ The funding in question, however, was for pre-1984 cellular development done by Bell Labs prior to divestiture and charged to the BOCs under a

⁸⁶ Id. at 44.

⁸⁷ Id.

license contract. Thus, the funding is irrelevant to this proceeding. It occurred before the Commission created its accounting requirements that are relevant to our provision of enhanced services and is not evidence of any violation of the Commission's non-structural safeguards.⁸⁸

MCI adds: "Similar problems were revealed in a CPUC audit released last summer..."⁸⁹ MCI does not specify what problems were "revealed" or where in the audit they were. Actually, the audit MCI refers to was released by NARUC and did not reveal any "similar" problems because there are none. We have been very careful to fund enhanced service work either "below the line" (unregulated) in Pacific Bell or outside of Pacific Bell. The accusations in the NARUC audit were either shown by our response to be unfounded, or were extremely minor problems that have been corrected; in no case were the auditors able to identify any harm to Pacific Bell's ratepayers.⁹⁰

Video Dialtone Service

CCTA states: "In its proposal to provide video dialtone service, for example, Pacific Bell has chosen a hybrid fiber/coaxial cable architecture, [sic] which it intends to carry video, voice and other enhanced services. Under Pacific's proposal,

⁸⁸ The delay in the refund did not harm ratepayers. Our refund included 18% interest.

⁸⁹ MCI, p. 44.

⁹⁰ See Pacific Telesis Group's Response To The Draft Affiliate Interests Audit Report, July 7, 1994. Moreover, under the New Regulatory Framework ("NRF") in California, rates are frozen and do not increase as a result of any increased expenditures. Pacific Bell has not been even close to sharing under NRF.

this would be accomplished by transferring funds from Pacific's ratepayers; in effect, using 'current consumers to invest in tomorrow's services.'⁹¹ CCTA provides no support for its statement and acknowledges that this is the subject of a separate proceeding concerning our request for Section 214 authority to construct video dialtone facilities.

CCTA is wrong. In short, we are not transferring funds from our ratepayers to build a video dialtone network. We are upgrading our telephone network. A hybrid fiber/coaxial cable broadband network for residential consumers will cost less to install and maintain than the amount we would spend to maintain the copper facilities that it will replace. Our new consumer broadband network will have the capability to carry video services, and we hope to offer many new services, but it will be the consumer's decision to buy from a CCTA member, from us, or from some other provider using yet another technology.

In addition, CCTA is wrong because the Commission has concluded that its rules "should protect telephone ratepayers from improperly subsidizing video dialtone service."⁹² The Commission continues to consider possible adjustments to those rules, including whether or not to have a separate price cap basket for video dialtone service. CCTA's statement adds nothing to these considerations and should be afforded no weight.

⁹¹ CCTA, p. 8.

⁹² Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Memorandum Opinion And Order On Reconsideration And Third Further Notice Of Proposed Rulemaking, released November 7, 1994, para. 161 ("Third FNPRM").

Similarly, CCTA raises "anchor programmer" and "shared channel manager" issues that are irrelevant to this proceeding.⁹³ The Commission has decided that anchor programmers are not allowed and that no customer can have more than 50 percent of the unshared analog channels.⁹⁴ We, of course, will comply with these requirements.

Finally, CCTA states that "Pacific's Palo Alto 'channel lease' service, the forerunner of its video dialtone service," is an example of LEC cross-subsidization that harmed competition and ratepayers.⁹⁵ CCTA's argument is another red herring that lacks any merit.

For the Palo Alto service, we complied with the Commission's requirement that the books of account for the facilities be kept separate from the books of account for telephone facilities.⁹⁶ In addition to separate books, the facilities used to provide channel distribution services were separate and distinct from any plant and equipment that we used to provide telephone service. Most significant to the issue of cross-subsidy, however, is that the costs of the facilities were not included in the calculations for either interstate or state revenue requirements. All costs associated with the facilities were removed prior to separation and before any allocation to

⁹³ CCTA, pp. 10-11.

⁹⁴ See Applications Of Ameritech For § 214 Authority, Order And Authorization, released January 4, 1995, p. 42, ordering paragraph f. The Commission is dealing with the shared channels and their administration in the Third FNPRM, paras. 271-275.

⁹⁵ CCTA, p. 11.

⁹⁶ In Re Pacific Bell For Authority Pursuant To Section 214, 60 Rad. Reg. 2d (P&F) 1175, para. 20 (1986).

interstate or state jurisdictions. Thus, there was no opportunity for cross-subsidization by telephone ratepayers, and both ratepayers and competition were protected.

VI. THE OPPONENTS OF STRUCTURAL RELIEF FAIL IN THEIR ATTEMPTS TO DENIGRATE THE SUBSTANTIAL BENEFITS OF BOC INTEGRATION

A. Opponents Of Structural Relief Propose Inappropriate Tests For Relief

Hatfield and other opponents of BOC integration propose an irrational, narrow test for structural relief. Hatfield states that the elimination of structural separation is beneficial only if the BOCs can prove that they would not otherwise enter the market for the service and no one else is willing to offer it.⁹⁷ This proposed test would ignore all the benefits that BOC entry into enhanced services markets on an integrated basis produces in the form of lower prices and better service to customers by increasing competition. It is true, for instance, that BOC entry has brought voice mail to new groups of mass market customers. Based on that and on the evidence of the costs of structural separation introduced by the BOCs, the BOCs could pass even Hatfield's overly restrictive test. The expansion of enhanced services markets caused by BOC entry, however, also has created a market for various other competitors, not just the BOCs, as these other competitors strive to meet the prices and service quality of the BOCs.⁹⁸ ITAA makes the same mistake as Hatfield when ITAA asserts that BOC integration has not produced innovative or new enhanced services. Not only is ITAA

⁹⁷ Hatfield, p. 53.

⁹⁸ See Pacific Bell and Nevada Bell, pp. 15-18.

wrong,⁹⁹ but its vision is too narrow. BOC entry has brought more than that in the form of more competition, with resulting lower prices and better service.

MCI asserts that "there is no reason, other than the BOCs' assertions, to believe that they could not have offered the same enhanced services under structural separation." MCI adds that "they must at least show, through economic data, that structural integration creates such significant efficiencies in the provision of enhanced services that it has made a difference in determining whether such services could be offered."¹⁰⁰ Ironically, it is MCI that relies solely on its own assertions, without economic support, whereas the BOCs introduced substantial economic data to demonstrate the high costs of structural separation.¹⁰¹

MCI also states that, with regard to voice messaging, "it must be shown that other ESPs are not providing it at the same rates and could not do so, even if they had been provided with the BOC network features they need in order to offer voice messaging at similar rates."¹⁰² We have two points in response. First, we introduced evidence by Frost and Sullivan that prior to BOC entry, except for CPE providers, no one was providing voice messaging at prices low enough for residential customers. The BOCs introduced low prices, resulting in price competition and the rapid expansion of the residential voice mail market.¹⁰³ Second, MCI and other ESPs have not

⁹⁹ See *id.* at 18-27.

¹⁰⁰ MCI, pp. 14-15.

¹⁰¹ See, e.g., Pacific Bell and Nevada Bell, Exhibit A.

¹⁰² MCI, p. 17.

¹⁰³ See Pacific Bell and Nevada Bell, pp. 15-18.

identified any BOC network features that they need but cannot get in order to compete with us, and there are none.

MCI asserts that only BOC voice mail has been successful.¹⁰⁴

Conversely, Ad Hoc states that it is content-based BOC enhanced services that have accounted for most of the BOC enhanced services growth.¹⁰⁵ They are both wrong for a number of reasons. First, voice mail/voice store and forward and content-based services cannot be viewed as totally separate. For instance, we have integrated our voice processing applications with content-based electronic publishing applications in order to provide information to our voice mail subscribers. Second, our comments show that we are offering and developing a variety of enhanced service applications in addition to voice mail.¹⁰⁶ Third, it makes no sense to ignore, as Ad Hoc does, the growth in pure voice messaging services and state that the rapid growth of BOC enhanced services could have been caused solely by the District Court's removal of the content-based prohibition.¹⁰⁷ The tremendous growth of BOC voice messaging clearly was triggered by the Commission's granting of relief from structural separation requirements.

¹⁰⁴ MCI, p. 14.

¹⁰⁵ Ad Hoc, p. 12.

¹⁰⁶ See Pacific Bell and Nevada Bell, pp. 18-27.

¹⁰⁷ Ad Hoc, p. 12.

B. BOCs, Like Third Parties, Should Be allowed To Integrate Their Businesses

In an attempt to support its position that BOC integration is not beneficial, MCI states that thousands of ESPs provide enhanced services while being separate from the BOCs' network operations.¹⁰⁸ ITAA states that none of the major ESPs in the United States is a carrier with integrated basic and enhanced services.¹⁰⁹ Compuserve states that the costs of separate subsidiaries for the BOCs are the same costs incurred by ESPs.¹¹⁰ NAA states that with structural separation a BOC affiliate is operating like an independent ESP.¹¹¹

These parties are wrong and miss the point. Third-party ESPs are allowed to integrate all their own businesses in order to take advantage of the efficiencies that integration can produce. These ESPs include VANs, IXCs, and others that have their own networks.¹¹² MCI and AT&T, for instance, are rapidly entering local markets. By integrating long distance, local, and enhanced services, they intend to offer consumers the "one-stop shopping" that they want.¹¹³ For instance, AT&T has been leasing lines from Frontier Corp. in Rochester, N.Y., and packaging together local and long-distance service for households.¹¹⁴ AT&T can add enhanced services to that package. Royce Holland of MFS recently testified before the Senate

¹⁰⁸ MCI, p. 16.

¹⁰⁹ ITAA, p. 59.

¹¹⁰ Compuserve, p. v.

¹¹¹ NAA, p. 5.

¹¹² See Pacific Bell and Nevada Bell, pp. 27-51.

¹¹³ See id. at 42-46.

¹¹⁴ "AT&T Requests Service In Two States," The Wall Street Journal, May 4, 1995, p. A3.

Telecommunications Subcommittee that joint marketing restrictions in legislation would have a tremendously disruptive effect on companies like MFS. The BOCs seek the same type of freedom to integrate their own enhanced and basic services in order to create the same types of efficiencies that are sought by all firms and to provide the "one-stop shopping" demanded by consumers.

C. The BOCs Need The Ability To Organize Their Businesses

MCI and ITAA point out that some of the BOCs, including us, provide some of their enhanced services through partially separated subsidiaries.¹¹⁵ Contrary to these parties' positions, the use of these subsidiaries does not mean that a structural separation requirement would lack substantial costs. In Computer III, the Commission was correct that the direct costs on the BOCs from structural separation requirements "are indications of more fundamental costs of structural separation -- namely, that [with structural separation] the BOCs are unable to organize their operations in the manner best suited to the markets and customers they serve."¹¹⁶

In order to continue to expand enhanced services to the mass market, the BOCs need to be able to experiment with different forms of doing business for different services, in different markets, and at different times. For instance, we transferred

¹¹⁵ MCI, p. 16; ITAA, p. 57.

¹¹⁶ CI-III Phase I Report and Order, para. 91. In Computer III, the Commission provided for flexibility: "Our decision does not preclude ... the BOCs from establishing or retaining various forms of business organization for their regulated and enhanced service operations, including the use of corporate entities that have some degree of autonomy from the entities that provide regulated telecommunications services." CI-III Phase I Further Reconsideration Order, para. 33.

selected personnel and assets to a wholly owned, partially integrated subsidiary, Pacific Bell Information Services.¹¹⁷ This subsidiary offers voice mail, voice store and forward, and fax store and forward services. We continue to rely on integration in providing these services, including integrated marketing and access to CPNI and shared facilities. We also continue to fully integrate other enhanced services, including electronic messaging/videotex gateway, protocol conversion, and Customer Dialed Account Recording ("CDAR") service, and continue integrated planning and development. As represented by our varied and experimental approach, the BOCs need a full range of integration choices to meet the evolving market for enhanced services and to fulfill the Commission's goal to bring new and more efficient services to the mass market.

D. Integration Of Equipment And Marketing Provide Efficiency Benefits

ATSI asserts that as a result of BOC structural separation the public "would not lose the benefit of any substantial efficiencies because (1) voice messaging service equipment is not typically integrated into local exchange network facilities, and (2) it is reasonable to assume that the BOCs have not overhired regulated personnel to the extent that they have significant time available to perform non-regulated tasks associated with the provision and marketing of voice-messaging services."¹¹⁸ Similarly, ITAA states that, with intelligent networks, "enhanced services can be provided more

¹¹⁷ On December 20, 1990, Pacific Bell filed with the Commission revisions to Pacific Bell's Cost Allocation Manual.

¹¹⁸ ATSI, p. 7.

efficiently 'outside' of the network than as an integral part of it."¹¹⁹ ITAA also asserts: "Unless a BOC has excess idle personnel, facilities and computers (which according to the BOCs, they do not), a BOC would have to acquire all of these things in order to start a new enhanced services business."¹²⁰ Ad Hoc states that "the deployment of AIN has virtually eliminated the operational efficiencies that may [sic] and have been attributable to providing enhanced services and basic services from the same central offices."¹²¹ Ad Hoc also asserts: "Joint marketing does not improve output of BOCs' personnel and, thus, creates no 'true' efficiencies."¹²²

These parties are wrong. They miss the point of how efficiencies work in a business. Whether or not the voice mail equipment is physically integrated into the network equipment, the BOC can attain efficiencies if it can house its different types of equipment in its own existing buildings. Conversely, inefficiency can be created if a BOC must lease separate space for different types of equipment, with the need for separate entrances, restrooms, security, and numerous other duplicative requirements. Like any other businesses, the BOCs need the flexibility to use and share their own space efficiently.

Concerning integrated marketing, contrary to ITAA's statements, the efficiencies are not gained from giving more work to "idle personnel." Integration creates efficiencies because the output of the personnel increases; it increases not because they were idle, but because their time is now more efficiently used. For

¹¹⁹ ITAA, p. 60.

¹²⁰ *Id.* at 57.

¹²¹ Ad Hoc, pp. 8-9.

¹²² *Id.* at 9.

instance, it often is more efficient for one sales representative to talk to a customer about the customer's basic and enhanced service needs than to hire two sales representatives, one to discuss basic services and the other to discuss enhanced services. Increasing our efficiency lowers our costs per unit of output, which results in lower prices, to the benefit of consumers.

At stake is not only how the BOCs can most efficiently employ their marketing personnel, but also how the BOCs can provide service in a manner that is efficient for customers. Customers have communications needs. They do not separate those needs between basic service needs and enhanced service needs. When our service representatives are talking to customers, if the representatives must stop short of fully meeting the customers' needs because the representatives cannot sell enhanced services, both our efficiency and the customers suffer. Forcing us to meet the customers' needs with a separate sales force creates duplicative waste, and is contrary to our customers' demand for "one-stop shopping."¹²³

Ad Hoc, Compuserve, ITAA, and MCI assert that requiring separate BOC marketing personnel for enhanced services would prevent improper cross-subsidy and discrimination.¹²⁴ In so arguing, they ignore the extensive non-structural safeguards that have worked well for years. They also ignore the benefits to consumers. BOC integrated marketing has brought network-based voice messaging services to the mass market which the other ESPs were not serving. They ignore these factors out of their

¹²³ See Pacific Bell and Nevada Bell, pp. 74-76, concerning the costs caused by a loss of integrated marketing.

¹²⁴ Ad Hoc, p. 9; Compuserve, p. 24; ITAA, p. 13; MCI, p. 42. See Part IX below concerning the non-structural protections against cross-subsidy.