own self-interest. The Commission cannot ignore them, because the Commission's goal is to benefit consumers, not individual competitors.

E. The CPNI Rules Properly Balance Public Interests

ATSI and ITAA also attempt to indirectly undo BOC integrated marketing via changes in the CPNI rules.[125] The Commission has recognized repeatedly that requiring an affirmative response from mass market customers prior to allowing the use of CPNI by BOC integrated service representatives would create a form of structural separation.[126] The Ninth Circuit upheld the Commission's reasonable balancing of efficiency, competitive equity, and privacy interests in its CPNI rules,[127] and the Commission should again reject proposals that it destroy that balance by preventing the efficiencies of BOC integrated marketing.

ITAA is simply wrong when it states that unless an unaffiliated ESP knows what data have been disclosed to a BOC's own enhanced service operations it will be unable to obtain aggregate CPNI that has been disclosed.[128] As part of meeting the Commission's requirements, we disclose to the industry the types of aggregate CPNI that we provide to our own enhanced services operations. Other ESPs may then request the same information.

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[125] ATSI, pp. 10-11; ITAA, pp. 30-31.

[126] CI-III Phase II Reconsideration Order, para. 97; CI-III Phase I Second Further Reconsideration and Phase II Further Reconsideration Order, para. 27.

[127] California v. FCC, 39 F.3d 919, 931 (9th Cir. 1994).

[128] ITAA, p. 31.

In its argument that the CPNI rules favor the BOCs, ITAA does not point out that the BOCs cannot get any aggregate or specific information from IXCs, VANs, and other ESPs, and that the information these companies have concerning their enhanced service customers is much more valuable than the BOCs' CPNI. The real issue is whether or not the BOCs will be allowed to continue treating CPNI in a manner that allows them to continue integrated marketing. The Commission should, once again, avoid being diverted from that issue, because it is BOC integrated marketing that is helping to bring enhanced services to the mass market.

F. The Commission Should Advise Congress That Full Structural Relief Is Working

The Information Industry Association ("IIA"), LDDS Communications, and NAA argue that the Commission should require structural separation because telecommunications legislation currently before Congress, as currently written and if passed, would require structural separation for some enhanced services.[129] The provisions of current bills before Congress reflect many compromises, are likely to change, and may or may not ever become law. The Commission should not, and legally cannot, establish telecommunications policies and requirements based on what Congress might do. The Commission is the expert federal agency on telecommunications and must regulate based on current statutes and the public interest.[130] Based on its review of the record in this proceeding, the Commission

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[129] See IIA, p. 3; LDDS, pp. 2-3; NAA, p. 6.

[130] 47 U.S.C. § 151 et. seq.

should advise Congress that full structural relief is working -- competition is flourishing and consumers and our national economy are obtaining the benefits of new, more efficient, and lower-priced services.

VII. ARGUMENTS THAT ONA HAS FAILED ARE WITHOUT MERIT

A. Opponents Of Structural Relief Ignore The Commission's Care In Establishing ONA Based On Both Intrastate And Interstate ONA Services

The opponents of BOC structural relief argue that ONA is of no value because ESPs purchase relatively few interstate ONA services.[131] This argument is of no merit. Most ESPs use intrastate ONA services because the Commission established, and later decided to retain, a federal access charge exemption which allows ESPs to use lower priced intrastate local exchange and other access services (i.e., intrastate Basic Serving Arrangements or "BSAs") for interstate traffic.[132] The ESPs use intrastate Basic Service Elements ("BSEs") with these intrastate BSAs because the Commission does not allow them to "mix and match."[133]

Thus, the ESPs largely have chosen intrastate ONA services because of their lower prices and then have complained that ONA is a failure because they do not buy many interstate services. Under the logic of their argument, the way to improve

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[131] Hatfield, pp. 12, 16, 49; ITAA, pp. 23, 25, 27; LDDS, pp. 8-9; MCI, pp. 1, 27.

[132] Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524, para. 60 (1991).

[133] Id. at para. 65.

ONA would be for the Commission to end the ESP access charge exemption. That would most likely result in the purchase of far more interstate ONA services.

The ESPs' purchase of intrastate services, however, does not undermine ONA. The Commission established ONA based on both intrastate and interstate services, and the Commission approved the BOCs' ONA plans only when it was satisfied that state tariffing methodologies met ONA standards.[134] Thus, contrary to MCI's assertions,[135] the ONA safeguard is effective regardless of whether ESPs purchase intrastate or interstate services.

B. Opponents Of Structural Relief Distort The Beneficial ONA-Related Work Being Done By The IILC And Other National Forums And Committees

MCI and GeoNet Limited, L.P. set forth numerous unfounded criticisms of the work being done by the Information Industry Liaison Committee ("IILC") and other national forums and committees concerning the BOCs' offerings of unbundled network services. These organizations are doing a good job in a complex area. They are addressing industry concerns, including uniformity, new technology platforms, and the standards, operational, and technical issues associated with interconnection in a multi-provider environment. Unlike the opponents of structural relief, these

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[134] Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, Memorandum Opinion and Order, 4 FCC Rcd 1, paras. 283-339; Memorandum Opinion and Order, 5 FCC Rcd 3103, paras. 79-88 (1990).

[135] MCI, pp. 26-27, 28, 41, 50.

organizations cannot ignore technical feasibility and the evolutionary nature of network unbundling.

We understand that the IILC, Bellcore, and USTA[136] intend to file reply comments addressing the comments that are relevant to them. We will limit our reply to some of MCI employee Peter P. Guggina's statements concerning forums and committees in his Affidavit that was submitted by MCI as Exhibit B to its comments.

Guggina's theme is that the BOCs dominate industry forums and keep them from meeting the needs of ESPs and IXCs. His conclusion is that the Commission should order the BOCs to further unbundle their networks. Guggina is wrong. He misconstrues both the activities of the BOCs and the forums' processes and presents a simplistic view of unbundling.

Guggina begins correctly when he states that industry forums and standards committees consist of both the telephone companies and firms that want to connect to the telephone network. He says: "Of necessity, the Regional Bell Operating Companies ("RBOCs") are major players in these forums and committees."[137]

Since it is primarily the BOCs' networks that are being addressed in these organizations, the BOCs are indeed "of necessity" major players. If the BOCs did not fully participate, MCI would have a legitimate complaint. That, however, is not the case. Each BOC generally sends a general representative to the meetings of these organizations and, when needed, specific technical subject matter experts from the

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[136] USTA does not participate in or influence the IILC activities. Nonetheless, Guggina unjustifiably criticizes USTA. MCI, Exhibit B, Affidavit, p. 18.

[137] Id. at Exhibit B, p. 3.

BOC or Bellcore. Regardless of how many BOC participants there are, each BOC gets only one vote, the same as any other company. Bellcore does not have a vote. Similarly, MCI sends multiple representatives to the Industry Carrier Compatibility Forum ("ICCF"), the Industry Numbering Committee ("INC"), and the Carrier Liaison Committee ("CLC"), but has only one vote at each forum.

Guggina does not allege that the BOCs send more representatives or experts than are needed. Nonetheless, his chief complaint throughout his affidavit is that the BOCs numerically dominate the forums and committees.[138]

Attendance at IILC Meetings

If Guggina has a legitimate complaint it is against the members of the industry that do not participate enough, not against the BOCs. As of November 29, 1994, the mailing list of the IILC, for example, listed approximately 70 non-LECs, the seven BOCs, GTE, Cincinnati Bell, SNET, Bellcore, and the Commission. The BOCs and other LECs generally attend. In our experience, normally approximately four non-LECs attend from the group consisting of ATSI, Biddle Communications, Cox Communications, Geonet, and MCI. Sometimes AT&T and perhaps a few others attend. The IILC tries to stimulate more attendance by non-LECs by choosing convenient locations near airports, but attendance is of course voluntary.

The Interindustry Advisory Group ("IAG") is the body within the IILC which reviews procedural fairness. In an IILC meeting on April 19, 1994, before the full IILC,

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[138] Id. at Exhibit B, pp. 3, 9, 10, 18.

Jacqueline Voegeli of our company asked the IAG Co-Chair Byron Biddle, of Biddle Communications, whether or not in his tenure any participant had ever raised a procedural fairness issue concerning the number of LEC vs. non-LEC participants at the IILC on any issue. Biddle's response was no, that it had never happened. If MCI is truly concerned about this issue, it should raise it with the IAG and try to correct it by encouraging more non-LECs to attend, not simply harbor the issue as a useful part of its standard argument against BOC integration.

ATIS Membership

Guggina also complains that ATIS is dominated by LECs.[139] As he acknowledges, ATIS was formerly a LEC organization (i.e., the ECSA). Thus, it is not surprising that LECs still outnumber other members. Neither the LECs nor the Commission can change that; only non-LECs can by signing up as members.

In any event, membership statistics do not measure the effectiveness of the ATIS forums. Heavy LEC participation is needed because the goal of the forums is to bring interested parties together to work on issues of common interest concerning parties' desires for uniform changes in local exchange services. Different non-LECs come at different times depending on their interest in particular issues, and the large IXCs regularly attend. The large LECs must attend because their interests are always involved. For the same reasons it is beneficial for ATIS staff to have knowledge of the LEC industry. The ATIS board members are elected from ATIS member companies.

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[139] Id. at Exhibit B, p. 17.

The ATIS Chairman, Casmin Skrzypczak, is an employee of NYNEX. Terry Yake, the ATIS Second Vice Chairman, is an employee of Sprint.

The only concrete objection Guggina makes concerning ATIS is how Skrzypczak responded to an Internet Society representative's question on whether or not ATIS was involved in lobbying on policy issues. Skrzypczak responded: "No, we do that in USTA."[140] Guggina complains that many ATIS members are opposed to the MFJ relief that USTA supports and says that Skrzypczak's statement is evidence that ATIS is influenced by "LEC roots." This objection is meritless. ATIS is obviously influenced by whatever companies join as members. The "we" that Skrzypczak was referring to was NYNEX, not the ATIS members as a whole. ATIS does not lobby policy issues. NYNEX lobbies through USTA. The Internet Society can lobby through its own organization, through the Commercial Internet Exchange Association, or through other means. The members of ATIS do not give up their individual identities. Guggina's use of this quote to attack ATIS is misleading and simply points up the frivolous nature of his affidavit. Guggina admits: "This is not to deny that much of [ATIS's] work is well intended and that its staff does in fact work very diligently towards solving the industry's problems."[141]

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[140] Id. at Exhibit B, p. 10.

[141] Id.

The Functioning of National Forums and Committees

Guggina states that the BOCs "have the incentive and the ability to use their power to influence decisions and resolutions that will favor their own enhanced service operations over those of non-RBOC providers."[142] In this statement Guggina makes assumptions that have never been established and are wrong. First, he assumes that the BOCs will work in concert. This is wrong. The "Bell System" was dismantled over a decade ago, and it is time for all parties to recognize that the BOCs are seven separate, distinct companies. Each BOC has distinct goals, objectives, and markets. The BOCs often disagree with one another on forum issues. Moreover, all decisions are by consensus, not majority rule. If, for instance, all seven BOCs agree, but one non-BOC does not, then there is no decision. The one dissenter can keep the issue open by continuing to discuss it, or can cause it to be closed without national agreement.

Second, Guggina assumes that the BOCs' interests in the development of enhanced service offerings are generally different than other ESPs. Actually, as both network service and enhanced service providers, the BOCs benefit from the continued development of a healthy enhanced service industry, with a wide variety of new enhanced service applications.

Based on his wrong assumptions, Guggina wrongly accuses the BOCs of disruptive activities that are contrary both to what is possible under the forums'

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[142] Id. at Exhibit B, p. 3.

processes and to the BOCs' self interests. For instance, he says that the BOCs change ESP-originated issues in ways that make them useless.[143]

Actually, although the scope and intent of new issues are evaluated by the group, issue originators must always participate in the evaluation and agree to any changes. Forum participants, both BOC and non-BOC, have no incentive to work on issues that are irrelevant to the participants' needs.

Guggina also says that the BOCs' requests for additional "technical contributions" are "a red herring to divert attention from the RBOCs' own inaction and unwillingness to provide solutions."[144] This is nonsense. A clear description of the service being requested is essential to evaluation of whether or not and how it can be developed. Accordingly, a technical description of the service is required as part of the IILC's systematic uniformity process for service requests.

Among the forums in which Guggina says he has participated, he does not list participation at the IILC.[145] In addition, the IILC record does not indicate MCI participation on ESP service request issues.[146] This lack of participation may help explain Guggina's apparent confusion concerning the IILC process.

The effects of this confusion are exemplified by Guggina's discussion of 555 access arrangements. Guggina complains that the BOCs waited until after "555" assignment guidelines were complete to consider development of the access

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[143] Id. at Exhibit B, pp. 6-7.
[144] Id. at Exhibit B, p. 7.
[145] Id. at Exhibit B, pp. 1-2.
[146] MCI does attend concerning general IILC issues, including issue #026 -- Long Term Unbundling and Network Evolution.

arrangements.[147] That some BOCs did not begin developing "the technical means to route, screen, and bill 555 calls" until after the assignment guidelines were complete was neither improper nor the primary source of the delay. Until the underlying resource (i.e., the 555 numbers) was available, the development of this capability for a very limited application understandably could fall behind other more pressing needs.[148] Guggina admits, however, that Telco Planning introduced the issue at both the IILC and ICCF in the first quarter of 1994. Contrary to Guggina's statements, the delay in national development was caused not by any alleged failure of BOCs to disclose their inability to provide 555 access arrangements, but by a lack of technical specifications. He does not explain why MCI did not know how the issue was progressing, or why MCI did not help with technical specifications.

Guggina states that "access customers and ESPs who have numbers assigned are currently forced to consider differing, varying, and undesirable technical approaches from the RBOCs"[149] because uniform technical specifications for national standards have not been developed. As Guggina admits, the industry is going forward with forum work to develop uniform technical specifications for 555 access arrangements.[150] That process will work better if MCI constructively participates.

Guggina's confusion concerning the ILLC's processes, and the nature of network unbundling, also is revealed in his discussion of the IILC's issue #026, Long

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[147] Id. at Exhibit B, p. 14.

[148] Guggina's reference to the BOCs' own "555" applications is to the "555-1212" application that has been in place for years.

[149] Id. at Exhibit B, p. 14. Thus, IXCs and ESPs that have "555" applications have not been prevented from access, but national standards are needed.

[150] Id. at Exhibit B, p. 14.

Term Unbundling and Network Evolution. Guggina complains that although this issue has reached initial closure "there is no indication or assurance of when an unbundled network will be available, if ever."[151]

The purpose of IILC activity is not to provide flash-cut network unbundling, but to provide clarity concerning what types of access to unbundled network services the industry wants so that an achievable level of national uniformity may be attained. The IILC process does not dictate implementation dates. An ESP may request access to specific unbundled services from individual BOCs under the "120 day process," but if services are needed from more than one BOC or other LEC, the IILC provides documentation that helps achieve greater uniformity. This documentation is necessary because LEC networks are made up of a number of different switch types of varying ages and capabilities. IILC documentation identifies the switch types with the capabilities to provide access to particular unbundled services and provides technical information about how the services can be configured. A company with national scope, such as MCI, can use the documentation in dealing with LECs across the country, and both that company and the LECs then have a clearer understanding of what is needed and what can be provided.

Guggina complains that issue #026 "is being 'sliced' into small pieces."[152] He implies that this is being done for purposes of delay, but no such delay is occurring. Actually, in many cases, technical and operational concerns identified in issue #026 were isolated into more specific issues that the IILC task group recommended for

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[151] Id. at Exhibit B, p. 4.
[152] Id. at Exhibit B, p. 5.

further work, even before issue #026, itself, closed. Some issues are referred to other industry bodies with the expertise to find solutions, and others are being dealt with in the IILC as new issues, in order to provide the necessary focus.

Contrary to Guggina's unsupported assertion,[153] we are unaware of any BOC "forum shop[ing]." Each forum has an area of focus, and all new issues brought into the IILC must be evaluated in order to determine if the IILC is capable of resolving the issue. If not, IILC representatives try to refer the originator of the issue to the correct forum.

Guggina states that "RBOC networks will not be unbundled in the foreseeable future. . . unless a regulatory mandate is imposed for a date certain or an incentive is created."[154] Actually, unbundling is evolutionary in nature and has been taking place for years. This unbundling has accelerated as a result of technological progress, the Commission's Expanded Interconnection and other proceedings, and state efforts to expand local competition. The BOCs have a number of incentives to provide greater access to unbundled network services. For instance, if the BOCs do not meet customer demands for access, customers increasingly will choose services from our competitors' networks. In addition, local service unbundling generally has become a prerequisite for potential BOC entry into interLATA service. MCI is dead wrong when it says that "fundamental unbundling is now a dead letter."[155]

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[153] Id. at Exhibit B, p. 8.
[154] Id. at Exhibit B, p. 5.
[155] Id. at 40.

Thus, unbundling will occur regardless of the IILC's involvement. The IILC, however, is an important part of the process since local interconnection will be easier for national companies like MCI because the IILC is helping to develop technical guidelines for uniformity.

Contrary to Guggina's request for mandatory requirements, the Commission should allow this process to continue. Flexibility is needed in order to produce worthwhile results that reflect technical and economic realities and the evolutionary nature of unbundling.

The BOCs will continue to be a positive force in the IILC and other forums regardless of what happens in this proceeding. The forum process works best, however, with the BOCs fully participating -- a level of participation that is encouraged by non-structural safeguards. The cost and customer confusion caused by structural separation requirements would greatly diminish or even terminate the BOCs' role as ESPs, and their interest in developing new services. Via non-structural safeguards, however, the BOCs can continue to attain the benefits of integration both for existing and new enhanced services. In that manner, the BOCs can continue to have the necessary experience, knowledge, and incentive to help develop the best national solutions to enhanced service issues.

Telecommunications Fraud Prevention

Perhaps the most incredible of Guggina's objections on behalf of MCI is that against Pacific Bell in connection with allegedly misleading customers and showing

bad faith in the area of telecommunications fraud prevention. We are recognized throughout the industry as the leader in toll fraud control. Last year MCI, itself, awarded us, over all the other BOCs and other LECs, its Access Vendor Achievement Award and recognized us as "Best in Class" for our work, which included the work that we did in 1994 to control fraud. MCI refers other BOCs to us in order to learn from our Centralized Fraud Bureau ("CFB"). In 1993, we were named "LEC Of The Year" by Telecommunications Advisors, Inc. ("TAI"), publisher of Telecom & Network Security Review, in recognition of our "significant efforts in combating all types of Toll Fraud."[156] Our system-wide proprietary software programs,[157] which are designed to monitor traffic to detect fraudulent activities as they begin, have been found by experts to be "the best in the country."[158] Our CFB has received high praise for its consumer and industry education on fraud prevention from the California PUC Outreach Office, the Department of Veterans' Affairs, other telephone companies, and members of the Customer Pay Telephone Industry. Our CFB also has received various commendations for its handling of fraud matters. In order to expand even further our efforts to get the message to consumers on how to fight telephone fraud, we recently joined "The Alliance To Outfox Phone Fraud," a six member alliance of telecommunications firms.

Thus, Guggina's negative statements about us are in contrast to what others, including MCI, have been saying. Accordingly, Guggina's statements should be

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[156] Telecom & Network Security Review, December/January 1994, p. 7. This publisher recently again highly praised all aspects of our toll fraud work. Telecom & Network Security Review, April 1995, p. 9.

[157] SLEUTH and Fraud Alert Systems Tracking Database ("FAST.DB").

[158] Telecom & Network Security Review, May/June 1993, p. 1.

scrutinized closely for what they reveal about how far MCI will go in its attempt to denigrate the BOCs and the forums that they attend.

Guggina's conclusions about BOCs misleading customers and showing bad faith concerning fraud come from his one example. He states that while the Toll Fraud Prevention Committee ("TFPC") of the Network Operations Forum ("NOF") was conducting deliberations on recommendations that address call forwarding fraud problems, "the RBOCs were filing tariffs that did not address the fraud risks."[159] He continues that "since then, two RBOCs -- including Pacific Bell, whose representative on the TFPC is the co-chair -- submitted tariffs ignoring the TFPC recommendations." He states that as a result the " 'good faith negotiation' utility of the industry forum process is questionable, at best." He concludes that this must be an "RBOC strategy to delay closure of issues, or delay saying no" and that "the RBOCs apparently have no intention of supporting the agreements they made in the TFPC."[160]

All of this is nonsense. We not only actively participated in the TFPC's review of call forwarding toll fraud, with Patricia Ramos of Pacific Bell as Co-Chair of the issue, but we have implemented many of the TFPC's potential solutions for controlling fraud. We have not implemented all the potential solutions because not all are feasible. They are not evaluated by the TFPC for technological and economic

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[159] MCI, Exhibit B, p. 16.
[160] Id.

feasibility, but are presented for further consideration. In the Call Forwarding Fraud Issue #026 written statement, the TFPC explains its potential solutions as follows:

> The Toll Fraud Prevention Committee performed an extensive evaluation of the vulnerabilities associated with call forwarding features and developed a list of potential solutions which could minimize the toll fraud implications.
>
> The industry recommendation should not be construed as the only solution to call forwarding fraud, nor should it preclude any segment of the telecommunications industry from developing and deploying other solutions.
>
> * * *
>
> Following is a list of prevention and detection measures for your consideration in controlling call forwarding abuse. Some of the solutions are technologically feasible now; others require development.

We have implemented the following TFPC potential solutions:

- Improved detection programs
  - Our fraud detection programs are upgraded to early identify call forwarding fraud.
  - Our SS7 detection program allows near real time detection. We believe that our early detection has saved the industry millions of dollars from call forwarding fraud.
- Information sharing processes with IXCs and LECs
  - Fraud Hotline referral process for IXCs
  - Process for immediate deactivation of fraud call forwarding features
- Improved security of provisioning call forwarding features
  - Customer authentication steps
  - Remote Access to Call Forwarding PIN not given out over the phone
- Restrict call forwarding to 0+, 0-, 011, 10XXX#, 900, N11, 976
- Customer education regarding social engineering

We also are exploring and evaluating the technological and economical feasibility of the following TFPC suggested switch upgrades:

- Limit number of call forwarding paths
- Limit number of times the call forwarded number can be changed

In addition, we are actively helping the authorities enforce the laws against this type of fraud. Our recent industry wide contributions to the fight against call forwarding fraud operations include:

- We identified several new call forwarding fraud operations.
- We alerted the industry to new call forwarding fraud operations.
- We facilitated switch upgrades to address call forwarding fraud operations.
  - Disallow international call forwarding capability
  - Disallow international call forwarding with class features
  - Disallow 10XXX# call forwarding
  - Disallow 1+ sequence dealing feature in certain switch types
- We facilitated a criminal investigation in call forwarding fraud operations.
  - 1 arrest November 1994
  - 6 arrests March 1995 (There has been a decline in the number of call forwarding fraud cases since the March arrests.)

Thus, we fully recognize the significance of the Call Forwarding fraud problem and are working diligently to control it. This problem, however, is of course not

unique. For instance, calling card fraud exists,[161] but IXCs continue calling card service because customers need that service to easily accommodate the billing of calls during their travels. Call Forwarding also is an important service for customers when they travel, because it provides them the ability to easily receive their calls when they are away from their homes or offices. The industry's focus is on continuing to provide products and services that meet customers' needs, while balancing technology advancement with ways to minimize fraud exposure.

The state tariffs that Guggina refers to are Remote Access To Call Forwarding and Call Forwarding on a wholesale basis. Prior to filing these tariffs, we carefully examined the toll fraud issues, and we believe that any potential for toll fraud is the result of the pre-existing call forwarding feature, itself. We have implemented all the above-described safeguards, which provide protection for the pre-existing feature, as well as for these newer ones. Remote access also has additional security features built into it. We do not know of any cases of fraud involving our offering of this feature. We also have created additional safeguards to help ensure that our wholesale offering will not expand the fraud opportunities which exist with respect to retail Call Forwarding.

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[161] For instance, the following large scale operation was reported late last year: "Federal authorities said yesterday they have uncovered one of the largest telephone calling card fraud operations ever. An employee at MCI Communications Corp. stole more than 50,000 calling card numbers that were used to make about $50 million in long-distance calls, they alleged. Ivy James Lay was alleged to have used specially designed software that could recognize and record calling card numbers and personal identification numbers as they were sent over MCI's long-distance telephone network, according to Secret Service special agent James E. Bauer. The stolen numbers were from calling cards issued by MCI, AT&T Corp., Sprint Corp. and other small long-distance and local telephone companies. Numbers also were stolen from conventional credit cards that can be used to charge calls." The Washington Post, October 4, 1994, p. C1.

Moreover, because the information identifying these calls is available in the initial address message ("IAM"), in a SS7 environment MCI or others can upgrade their networks to deny call-forwarded calls if they choose.

The Remote Access to Call Forwarding feature is of special interest to voice messaging and other ESPs because it allows their customers' calls to be forwarded to the enhanced service even if the customer forgets to set up the forwarding of calls before leaving the office. The wholesale Call Forwarding feature is one of our Custom Calling features that MCI and other IXCs have strongly encouraged us to provide in order to assist them in their businesses. Nothing in the TFPC, or our own, review has indicated that fraud concerns outweigh the need to provide the service, but we are continually reviewing fraud issues and better means to provide protection. We will continue to contribute on these issues in various ways, including constructive participation in the national forums that are doing a good job in a complex area. Guggina's assertions on behalf of MCI against us in this regard are no more than regrettable regulatory scheming.

C. Opponents Of Structural Relief Ignore Or Distort The BOCs' Offerings Of Access To Unbundled Services

The opponents of structural relief make a number of other meritless arguments against ONA. They make unfounded assertions concerning the BOCs' provision of new unbundled features pursuant to ONA; they ignore or distort the amount of unbundling of BOCs' networks that has occurred; and they ignore the amount of competition that has arisen for the use of the BOCs' networks. They also ignore the

existence of competition for Intelligent Network ("IN") services, our willingness to make available to third-party ESPs and others appropriate mediated access to our Advanced Intelligent Network ("AIN") , and the need to consider network reliability in unbundling decisions.

ONA

Hatfield proposes the same technical and economic criteria for unbundling as the Commission, and like the Commission finds that unbundling is an evolutionary process.[162] Hatfield quickly brushes aside those rational thoughts, however, and concludes that ONA has failed because the BOCs do not automatically and immediately offer every proposed form of network access and unbundling, without concern for standards, network reliability, or developmental costs.[163]

Hatfield does a complex juggling of numbers in order to attempt to make it appear that the BOCs have met few of the ESPs' original 118 requests for ONA services.[164] The straightforward results are as follows: Of the original 118 requests, one or more BOCs have met 74 percent; three or more BOCs have met 68 percent; five or more 64 percent; six or more 56 percent; and all seven 43 percent.[165] Moreover, Hatfield is wrong when he states that those classified as requests for a "service that

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[162] Hatfield, pp. 4, 26, 30.

[163] See id. at 27-28.

[164] Id. at 12.

[165] These statistics were derived from Appendix B of the update of BOC ONA Special Report #5, filed with the Commission by each BOC on March 31, 1995. Some of the requests may have been met with different services by different BOCs.

requires development" have been "dismissed by the RBOCs from further consideration by the wave of a hand."[166] Developing new services is not a trivial undertaking, but we are continually developing services that meet the Commission's technical and economic criteria.

Hatfield states that electronic mail services "would benefit from widespread access to ISDN lines, which would allow much faster download of information and more rapid printing of information to computer screens."[167] He then makes the unsupported and incorrect statement: "The local telephone companies have restricted the functionality of ISDN."[168]

In our comments, we described the rapid expansion of our deployment of wider availability and increased functionality of ISDN.[169] We anticipated that the new accessibility and capability of ISDN will increase all providers' service applications, including Internet and on-line service access, Group IV fax, LAN to LAN connectivity, dial-up data interfaces for on-line business transactions, work at home, and desktop conferencing. This is quickly becoming reality. For instance, Internet access providers, including Surf Communications, Inc., are beginning to use and advertise our ISDN with their enhanced services. In addition, Prodigy announced that it was joining three BOCs, including Pacific Bell, in order to give its customers access to ISDN.[170] We, too, use ISDN with our electronic messaging services.

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[166] Hatfield, p. 12.
[167] Id. at 50.
[168] Id.
[169] Pacific Bell and Nevada Bell, p. 63.
[170] "Prodigy to Team Up With 3 Baby Bells," San Francisco Chronicle, April 19, 1995, p. B2.

On April 3, 1995, we announced a comprehensive plan to spread ISDN technology throughout California by 1998. We are working together with numerous software, hardware, and on-line service providers, including Compuserve, Intel, 3 Com, and Microsoft.[171] It has been reported that, "[b]y the close of 1994, an estimated 400 applications populated the ISDN landscape" and that the "$2.7 billion ISDN market is forecast to quadruple by 1997."[172]

"Fundamental Unbundling" And Expanded Interconnection

Hatfield asserts that the Commission's original intent was that "fundamental unbundling" would unbundle the "loop, switching, signaling, intelligent network services, interoffice transport -- and even...the distribution and feeder portion of the loop."[173] Hatfield's only support for this incorrect assertion, however, is the Commission's statement that under ONA a carrier "must unbundle key components of its basic services...."[174] This did not mean unbundling all the parts of the network mentioned by Hatfield. Actually, the most concrete statement that the Commission made in Computer III, in this regard, was that ONA would include "the kind of fundamental unbundling that would allow ESPs to connect their own trunks or loops to BOC switching facilities."[175] As we explained in our Comments, the BOCs have

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[171] See "PacBell to launch massive ISDN push," PC Week Magazine, April 3, 1995.

[172] "ISDN is going places: Should Microsoft have swung away or bunted?," PC Week Magazine, April 3, 1995.

[173] Hatfield, p. 10.

[174] Id., citing Computer III, Report and Order, June 16, 1986, para. 113.

[175] See Notice, paras. 15 and 30, and n. 43.

achieved this "fundamental unbundling" as the result of the Expanded Interconnection Proceeding.[176]

Although not required for "fundamental unbundling," many of the other parts of the network mentioned by Hatfield are being unbundled in other contexts. For instance, Phase II of the Expanded Interconnection Proceeding unbundled key signaling information. We have proposed a means of allowing mediated access to our Advanced Intelligent Network.[177] Loops and switch ports are being unbundled in response to state commission requirements for local competition.[178]

Hatfield states that a LEC can refuse to convey Carrier Identification Code ("CIC") information over its SS7 network.[179] Similarly, MCI states that a capability is needed to allow the LEC to pass the CIC via SS7 in an originating direction.[180] These parties are ignoring CICs and other signaling information that BOCs are providing pursuant to the requirements in Phase II of the Expanded Interconnection Proceeding.

ITAA states: "The BOCs are in a position to target their competitors because they provide at least four of the communications links involved in almost every use of an enhanced service."[181] What ITAA does not point out is that three of the links face stiff competition from CAPs and IXCs. These links include the "line between the central office and the point at which an ESP collects traffic and performs preliminary

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[176] Pacific Bell and Nevada Bell, p. 57.
[177] See id. at 66-67.
[178] See id. at 56.
[179] Hatfield, p. 24.
[180] MCI, Exhibit B, p. 10. We understand that Bellcore is replying regarding MCI's incorrect statements about how this issue was addressed in national forums.
[181] ITAA, p. 6.

processing," and "links that connect [the ESPs'] nodes...to the interexchange network and that connect the interexchange network to their data centers...." The other link ("the line between the subscriber and the central office serving the subscriber") is becoming increasingly competitive.[182]

ITAA also makes the unsupported and incorrect statement that for ONA to be effective ONA must "allow ESPs to physically collocate ESP-provided equipment in the BOCs' central offices."[183] The Commission has considered that issue on numerous occasions and always correctly concluded that ESPs do not need this right and that it would take up too much central office space. In addition, as established in the physical collocation appeal, it would be an unauthorized taking of our property.

Intelligent Network

Hatfield complains that the BOCs can decide against the offering of Intelligent Network ("IN") services because of technical and economic considerations, including network reliability.[184] What he does not state is how he can rationally ignore these considerations. In the Intelligent Network Proceeding, the Commission made it clear that it takes these considerations very seriously:

> The benefits of modular architecture could be considerable, offering great flexibility to network users to develop new services, and increasing competition in the provision of both basic and enhanced services. However, we also believe that there may be significant costs to modularity. In addition

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182 See Pacific Bell and Nevada Bell, pp. 28-51, 56.
183 Id. at 26.
184 Hatfield, pp. 26-27.