

not on the grassy knoll, do not know the whereabouts of Amelia Earhart, and have not thwarted competition or abused consumers. Opponents' tabloid claims to the contrary must be rejected.

III. Attempts To Redirect The Commission's Attention from the Primary Issue Before It Must Be Rejected.

Several parties attempt to redirect the Commission's attention away from the public interest analysis of enhanced service markets. Several, for example, spin their wheels debating the irrelevant question of the appropriate "starting point" for the Commission's analysis. Others attempt to redirect the focus of the Commission's initiative on local exchange service competition rather than on enhanced service markets. Neither ploy should be dignified by the Commission.

MCI, ITAA, and CompuServe, for example, spend an inordinate portion of their respective filings arguing whether the Commission has properly framed the issue before it at this point.⁴³ They assert that the Commission has improperly viewed its analytical task as being to compare the relative costs and benefits of moving from a CEI environment either to a full structural relief environment or to a separate subsidiary requirement. They argue that,

⁴²(...continued)
filings on this date by Bellcore and the Information Industry Liaison Committee.

⁴³ MCI at 6-12; ITAA at 12-19; CompuServe at 12-16.

instead, the Commission should be comparing the costs and benefits of moving from a separate subsidiary requirement, which they assert to be the "regulatory status quo," to full structural relief versus retaining the asserted "status quo." These parties, however, have expended a lot of energy arguing a moot issue.

In actuality, the proper analytical perspective is not consideration of the relative costs and benefits of moving from one regulatory regime to another, but the relative costs and benefits of the imposition of differing regulatory policies. In other words, the question here is which regulatory policy, when implemented, will better serve the public interest. The anticipated results of competing policy directions are the critical factors in the Commission's deliberations. Opponents' one-sided debate over the parameters of the prevailing regulatory environment is hardly relevant to a comparative cost/benefits analysis of differing regulatory regimes to be implemented on a going forward basis. Thus, opponents' contentions that the Commission may have improperly focused on the public interest associated with moving from point B to point C rather than from point A to point C have missed the mark. The Commission's task is to compare points A and C and all points in between.

The Commission has indicated it intends to do precisely that in this proceeding. The Commission succinctly

summarized the scope of its inquiry when, after reviewing competing views of whether structural or non-structural safeguards are more in the public interest, it stated:

To obtain further information and more detailed evidence on these issues, we ask parties to comment on the relative costs and benefits of structural and nonstructural safeguards for the provision of enhanced services by the BOCs. We also seek comment on the protection against discrimination necessary to allow ESPs and BOCs to compete effectively without creating unnecessary burdens, whether certain types of enhanced services may require greater protection than others, and whether structural separation or additional nonstructural safeguards are needed for specific enhanced services.⁴⁴

Recognition that the proper definition of the "regulatory status quo" is irrelevant to consideration of competing regulatory policy options is far different, however, from concluding that the Commission is precluded from considering the practical effects adoption of a particular policy is likely to have on the public interest. Thus, while the legalistic and theoretical debate that may be had regarding the proper definition of the "regulatory status quo" is not useful to resolution of the public interest analysis, consideration of the "public interest status quo" is certainly relevant. The Commission has the authority and, indeed, the obligation to consider the interests of customers who currently are using or have available to them the enhanced services provided by the BOCs.

⁴⁴ Notice at ¶ 39.

As BellSouth and others showed previously, millions of customers would be directly affected by a policy decision that reduces or eliminates the availability, or causes significant increases in prices, of currently available services. The Commission cannot ignore these interests in its public interest analysis on the mere theory that the "regulatory status quo" is not what it once was. Opponents' efforts to skew the Commission's review by limiting it to the opponents' perspective of the prevailing "regulatory status quo" are misdirected and should not derail the Commission's comprehensive public interest analysis.

An alternative tactic used by several opponents to divert the Commission's attention from the principal issues before it was to attempt to leverage the Commission's interest in development of a nondiscriminatory and competitive market for enhanced services into a rulemaking on development of competition in basic local exchange service markets. AT&T's comments, though short, are telling: AT&T blithely argues, without supporting rationale, that the BOCs' hands should be tied in enhanced service markets while AT&T "test[s] the feasibility of local exchange competition."⁴⁵

Hatfield and others similarly attempt to reset the Commission's agenda in this proceeding. Indeed, in these parties' view, benefits to enhanced service markets are

⁴⁵ AT&T at 2.

merely a secondary concern. They would have unbundling to achieve local service competition become the foremost objective of this proceeding.⁴⁶

As "tortured"⁴⁷ as the history of this proceeding has been, one aspect that has remained constant is the Commission's devotion to developing an appropriate framework for BOC participation in enhanced service markets. That objective has been carried forward in this stage of this proceeding. Clearly, the Commission need not resolve the myriad issues associated with local exchange competition in order to adopt nonstructural safeguards for BOCs' enhanced services. Indeed, even AT&T had the presence to acknowledge that local competition issues are better addressed in a separate proceeding.⁴⁸

Moreover, that Hatfield and others have seized the notion of "fundamental unbundling" as a means of pursuing their local competition agenda confirms BellSouth's prior

⁴⁶ Hatfield at 1 and passim.

⁴⁷ CompuServe at 5. Clearly, the history of Computer III has been tortuous for many, with protracted rulemakings, multiple phases, basic disputes over policy direction, and numerous appellate decisions. That the history has also been "tortured" is confirmed by the procedural summaries included in several opponents' filings. See, e.g., CompuServe at 5-11 (generally) and at 6 (characterizing the Commission's lengthy and complex Computer III proceedings as an "abrupt[] change[] [in] course"); ITAA 12-19 (generally) and at 14 (similarly referring to "sudden about-face" in Computer III and "new-found belief" in accounting safeguards, ignoring length and complexity of accounting safeguards proceedings).

⁴⁸ AT&T at 3.

observation that the debate over the "proper" degree of unbundling is largely irrelevant to the safeguards the Commission may impose to insure nondiscriminatory participation by the BOCs in enhanced service markets.⁴⁹ The Commission should not allow the resolution of its longstanding pursuit of nonstructural safeguards for effective BOC participation in enhanced services to be held hostage to the shifting agenda of the Hatfields of the world. Such attempts to divert the Commission's attention from its primary objective in this proceeding must be rejected.

CONCLUSION

The record is clear and convincing. Structural relief provides measurable public benefits and does so with no detrimental consequences to the competitive marketplace. The Commission should affirm its commitment to bringing

⁴⁹ BellSouth at 11-13.

these benefits to the American public by once again adopting a policy permitting full structural integration of the BOCs' basic and enhanced services.

Respectfully Submitted,
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Attachment A

1. Bell Atlantic Telephone Companies (Bell Atlantic)
2. Southwestern Bell Telephone Company (SBC)
3. Ameritech
4. New York Department of Public Service (New York)
5. Public Service Commission of Wisconsin (Wisconsin)
6. Pacific Bell and Nevada Bell (Pacific)
7. MCI Telecommunications Corporation (MCI)
8. AT&T Corporation (AT&T)
9. U S WEST, Inc. (U S WEST)
10. The NYNEX Telephone Companies (NYNEX)
11. Association of Teleessaging Services International, Inc. (ATSI)
12. The National Cable Television Association, Inc.
13. The Commercial Internet eXchange Association
14. Ad Hoc Telecommunications Users Committee
15. The California Cable Television Association (CCTA)
16. The Newspaper Association of America
17. The Information Technology Association of America (ITAA)
18. Information Industry Association (IIA)
19. CompuServe Incorporated (CompuServe)
20. Prodigy Services Company (Prodigy)
22. LDDS Communications, Inc. d/b/a LDDS Worldcom
23. The United States Telephone Association (USTA)
24. GeoNet Limited, L.P. (GeoNet)

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of April, 1995, serviced all parties to this action with the foregoing REPLY COMMENTS reference to CC Docket 95-20, by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


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