

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

APR 25 1996

In the Matter of )  
 )  
Policy and Rules Concerning )  
the Interstate, Interexchange Marketplace ) CC Docket No. 96-61  
 )  
Implementation of Section 254(g) of the ) DOCKET FILE COPY ORIGINAL  
Communications Act of 1934, as amended )

**COMMENTS OF THE INFORMATION  
TECHNOLOGY ASSOCIATION OF AMERICA**

The Information Technology Association of America ("ITAA"), by its attorneys, hereby submits the following comments in response to the Notice of Proposed Rulemaking ("Notice") which the Commission issued in the above-captioned proceeding on March 25, 1996.<sup>1</sup> In Section VIII of the Notice, the Commission has solicited comment on whether nondominant interexchange carriers should be permitted to bundle customer-premises equipment ("CPE") with interstate, interexchange services.<sup>2</sup> As set forth more fully below, ITAA urges the Commission not to relax its longstanding prohibition against bundling.<sup>3</sup> The bundling of equipment and service will inevitably inflate the prices of

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<sup>1</sup> See Policy and Rules Concerning the Interstate, Interexchange Marketplace/ Implementation of Section 254(g) of the Communications Act of 1934, as amended, Notice of Proposed Rulemaking, CC Docket No. 96-61, FCC 96-123 (released Mar. 25, 1996) [hereinafter "Notice"].

<sup>2</sup> See id. at ¶ 88.

<sup>3</sup> See 47 C.F.R. § 64.702(e) (1995).

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interexchange services, restrict the healthy competition which now characterizes the CPE marketplace, and therefore disserve the public interest.

## **I. INTRODUCTION AND INTEREST OF ITAA**

ITAA is the principal trade association of the Nation's information technology industries. Together with its twenty-five affiliated regional technology councils, ITAA represents more than 9,000 companies throughout the United States. ITAA's members provide the public with a wide variety of information products, software and services. Chief among these, at least from the Commission's perspective, are network-based enhanced services. The enhanced services furnished by ITAA's member companies are used by business, government, and residential consumers, and include such diverse offerings as credit card authorization, computer-aided design and manufacturing, database retrieval, electronic data interchange, gateways, information management, payroll processing, transaction processing, voice mail, and other remote access data processing services.

ITAA's member companies take full advantage of today's vibrant, fully competitive CPE market. In delivering their services to their customers, ITAA's members employ a vast array of CPE, ranging from the most basic to the most sophisticated. Today's highly competitive CPE marketplace enables ITAA's member companies to acquire innovative, state-of-the-art equipment from a large number of suppliers at reasonable, market-driven prices. ITAA is therefore troubled by the Commission's proposal to eliminate a cornerstone of today's competitive CPE marketplace, i.e., the prohibition against bundling CPE and basic transmission service.

## II. THE COMMISSION SHOULD NOT RELAX OR ELIMINATE ITS PRO-CONSUMER, PRO-COMPETITIVE UNBUNDLING REQUIREMENT

In the Notice, the Commission acknowledges that the unbundling of regulated communications service and unregulated CPE has proven to be of significant value to consumers.<sup>4</sup> The Notice, nonetheless, proposes to eliminate the unbundling rule as it applies to nondominant interexchange carriers. In support of this proposal, the Notice suggests that the level of competition in the interexchange market renders the rule against unbundling unnecessary as a safeguard against anticompetitive conduct.<sup>5</sup> The fundamental difficulty with the Commission's proposal is that it fails to appreciate the central role that unbundling has played -- and will continue to play -- in ensuring a competitive CPE marketplace. It also understates the threat that bundling would pose to the continuing health of that market.

From a consumer's perspective, the Commission's unbundling rule has been an unqualified success. If there ever were a Commission policy, the benefits of which are empirically and undeniably verifiable, it is the Commission's prohibition of bundling. In the years since bundling was prohibited, consumers have benefitted from the proliferation of new, innovative, and competitively priced CPE. Today's dynamic CPE market has produced a cornucopia of equipment from which consumers are able to choose.

Given the many benefits of unbundling, ITAA is at a loss to understand why the Commission appears to be intent on abandoning unbundling as the cardinal principle underlying today's competitive CPE marketplace. ITAA is particularly perplexed because

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<sup>4</sup> See Notice at ¶ 86.

<sup>5</sup> See id.

the unbundling rule disadvantages no one. It does not deny consumers the benefits of one-stop shopping, nor does it preclude any common carrier from providing CPE. In purpose and effect, the unbundling rule benefits everyone by placing all CPE providers on a level playing field.

Bundling, by contrast, will harm consumers. By definition, bundling limits consumer choice. Moreover, given the imperfect state of competition in the interexchange market,<sup>6</sup> bundling will create problems for consumers and producers of CPE. Although the Notice downplays the adverse impact which interexchange carriers could have on the CPE marketplace, ITAA fears that the carriers will use their ability to bundle CPE to the detriment of consumers. Rather than run this risk, the Commission should err on the side of consumers and retain its prohibition against bundling.

Not being manufacturers, the interexchange carriers will use bundling to help market their interexchange services and to preserve or increase their market share. Bundling will not make interexchange carriers more efficient. Bundling will not reduce their costs of providing service. Rather, bundling will be used solely to acquire new customers. To obtain new customers, carriers will offer CPE at discounts, at a loss, or even for free. The costs of such bundling will ultimately be passed through to, and borne by, consumers in the form of

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<sup>6</sup> AT&T, MCI and Sprint continue to collectively control the bulk of the market. As of the close of 1995, the three carriers accounted for approximately 82 percent of the interexchange market measured by revenues. This figure has decreased slowly over time. It was approximately 84 percent at the end of 1994. But such development has not changed the concentrated nature of the market. See Common Carrier Bureau, Industry Analysis Division, Long Distance Market Shares: Fourth Quarter 1995, at Table 6 (Mar. 1996).

higher service charges. Moreover, customers that do not buy a bundle of CPE and service will be forced to subsidize customers that do.<sup>7</sup>

The Commission's proposal to require carriers to continue to offer service on an unbundled basis does not eliminate this problem.<sup>8</sup> Even if not required to do so by the Commission, carriers will continue to offer service unbundled from CPE rather than exclude themselves from that market segment. The fundamental point remains that all consumers, both those who purchase bundled CPE and those who purchase unbundled CPE, will pay higher prices for service than they otherwise would if the Commission retained its unbundling requirement.

The bundling of services and equipment would also undermine consumer choice in the CPE market. In creating bundled packages, carriers will inevitably work with a discrete number of CPE suppliers. The success or failure, then, of any individual CPE provider would not turn on its ingenuity, customer care, or product quality, but instead on its ability to cooperate with carriers in creating discounted packages (and eventually boosting a carrier's profits). Carriers also could manipulate their interface and other operating

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<sup>7</sup> The fact that the Commission has determined that interexchange market is "substantially competitive," see Notice at ¶ 86, does not mean that carriers lack the ability to raise service charges above competitive levels. Market power is a matter of degree. Although an individual IXC in a "substantially competitive" market might not be able to maintain prices at levels substantially above cost, it undoubtedly could sustain prices at levels modestly above cost. Because the cost of CPE accounts for only a small fraction of the cost of a services/CPE package, modest increases in the price of services would be sufficient to fund deep discounts in CPE prices. In a "substantially competitive" market, carriers have a strong incentive to adopt this strategy in order to promote the sale of higher priced services.

<sup>8</sup> See Notice at ¶ 89.

specifications to induce such cooperation and further limit competition. Again, ultimately, the consumer will pay the price of reduced competition in the CPE field.

The Notice also understates the international ramifications of the Commission's proposal. The United States has for many years steadfastly pursued the unbundling of network services and CPE in bilateral and multilateral negotiations. Internationally, bundling hurts not only U.S. CPE providers, but also ITAA member companies and other U.S. users that operate international networks. Bundling forces them either to acquire equipment they do not want or to purchase it at noncompetitive prices.

The Notice attempts to reconcile the Commission's longstanding international policy with its bundling proposal by distinguishing the United States from other countries, *i.e.*, by suggesting that the U.S. markets for interexchange services and CPE are competitive, whereas the markets in other countries presumably are not.<sup>9</sup> Having operated in many countries around the world for many years, ITAA's members fear that the Commission's proffered rationale is a subtlety that will be lost or ignored overseas. As a consequence, the efforts of the United States to open foreign markets will be undermined. By abandoning unbundling, the Commission will encourage other countries to do the same (whether or not the Commission concurs in their assessment of the competitiveness of their markets). The Commission should therefore affirm its commitment to unbundling so that there is no confusion as to where the United States stands with regard to the opening of foreign markets to U.S. companies.

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<sup>9</sup> See id. at ¶ 90 n.193

### III. CONCLUSION

For all of the reasons set forth above, ITAA urges the Commission to reject the Notice's proposal to eliminate the Commission's longstanding unbundling requirement.

Respectfully submitted,

INFORMATION TECHNOLOGY  
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