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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	DOCKET FILE COPY ORIGINAL CC Docket No. 96-149

REPLY COMMENTS OF THE
INFORMATION INDUSTRY ASSOCIATION

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Information Industry Association
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Services Originating in the LEC's	)	
Local Exchange Area	)	

Reply Comments of the
Information Industry Association

Summary

The Information Industry Association (IIA) hereby submits its reply to comments received in response to the Commission's Notice of Proposed Rulemaking[1] in this proceeding. In the initial commenting round, several parties addressed the question of what services are included in the statutory definition of information services under Section 272(a)(2)(C), and whether activities that the Commission has classified as "enhanced services" fall within that definition. IIA believes that the FCC should define information services to be coextensive with the definition of enhanced services under its previous decisions in the Computer II and Computer III proceedings. This will ensure that all interLATA information services are covered under the separate subsidiary requirements,

[1] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149, Notice of Proposed Rulemaking (July 1, 1996) [hereinafter NPRM No. 96-149]. See, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§151 et seq.) [hereinafter 1996 Act].

thereby promoting competition within the information industry and providing certainty to the regulated community regarding the Commission's treatment of these services.

Discussion

The FCC should interpret the definition of information services under the Act to be coextensive with the definition of enhanced services under Computer II and Computer III. (NPRM No. 96-149, para. 42)

In its initial notice of proposed rulemaking, the Commission raised several issues regarding Section 272 (a)(2)(C) of the 1996 Act, which addresses the entry of a Bell Operating Company (BOC) into the interLATA information services market.[2] Specifically, the Commission sought comment on what services should be included in the statutory definition of information services, and whether the activities that the Commission classifies as "enhanced services" fall within the definition of "information services." [3] IIA agrees with the comments submitted by those parties who support the FCC equating information services under Section 272 with the Commission's current treatment of enhanced services under the Computer II and Computer III regime.[4]

The 1996 Act defines "information service" as the "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications system."[5] Pursuant to its decisions in Computer II and Computer III, enhanced services are defined

[2] NPRM No. 96-149, para, 42.
[3] Id.
[4] See, e.g., Comments of Information Technology Association of America at 12-14; Pacific Telesis Group at 8-9; MCI at 16.
[5] 1996 Act, Sec. 3 (41).

as services that "employ computer processing applications which act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information."[6] Although the definitions may facially appear to differ, there are a number of compelling reasons for the Commission to view them as coextensive.

First, by equating information services with enhanced services the Commission will ensure that currently competitive services are subject to adequate safeguards. Absent such treatment, some such services -- and service providers -- may be placed at risk. In particular small information service providers may be put at a competitive disadvantage vis-à-vis the BOCs in the provision of information services. This would clearly be inconsistent with the pro-competitive goals of the 1996 Act.

Secondly, if certain enhanced services are not found to fall within the scope of information services, they may be subjected to regulation as telecommunications services -- an outcome not anticipated by the 1996 Act. The deregulatory purposes of the 1996 Act would be frustrated were regulation to be extended to previously unregulated offerings.

Third, a ruling that enhanced services and information services are coextensive will be consistent with the regulated industry's and the court's interpretation of both terms. The telecommunications industry and the courts have long recognized that there is no material difference between information services and enhanced services. Indeed, Judge

[6] 47 C.F.R. s. 64.702

Greene, in the 1982 Modification of Final Judgment proceedings, found that the Commission's definition of enhanced services was "essentially the equivalent of the information services described in the proposed decree."[7] Not surprisingly, since that time the telecommunications and information industries have conducted their business under the assumption that the scope of information services and enhanced services are coextensive. To treat these two services differently at this point in time would introduce uncertainty into both communities by not giving clear notice as to what services will be subject to the separate subsidiary requirements. This will leave all participants with less guidance on how they conduct their business affairs and allocate their resources.

Conclusion

For the foregoing reasons, to promote competition within the interLATA information services market and to maintain certainty within the regulated community, the commission should equate information services under Section 272(a)(2)(C) of the 1996 with the current treatment of enhanced services under Computer II and Computer III.

Respectfully submitted,

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Dated: August 30, 1996

[7] United States v. American Telephone and Telegraph Company, 522 F. Supp. 131, 178 n. 198 (D.D.C. 1982), (subsequent history omitted).